TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 1908.36.

LILLIAN S. BUTLER, PLAINTIFF IN ERROR,

vs.

JOHN D. FRAZER.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 11, 1908.

(20,603.)

(20,608.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 251.

LILLIAN S. BUTLER, PLAINTIFF IN ERROR,

vs.

JOHN D. FRAZEE.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

No. 1485.

LILLIAN S. BUTLER, Appellant,
vs.
JOHN D. FRAZEE.

Supreme Court of the District of Columbia.

No. 45829. At Law.

LILLIAN S. BUTLER, Plaintiff,
vs.
JOHN D. FRAZEE, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:—

Declaration and Notice to Plead.

Filed December 15, 1902.

In the Supreme Court of the District of Columbia.

At Law. # 45829.

LILLIAN S. BUTLER, Plaintiff,
vs.
JOHN D. FRAZEE, Defendant.

The plaintiff, Lillian S. Butler, sues the defendant, John D. Frazee, for that heretofore, to wit, on the 28th day of December, 1901, the defendant was the owner and proprietor of a certain steam laundry situate at No. 2121 E street, N. W., in the city of Washington, District of Columbia, and that on the date aforesaid the plaintiff was an employee of the said defendant, and in the course of her duty it became necessary to use certain mangles, or ironing machines, and it then and there became, and was, the duty of said defendant to have for the use of plaintiff in the performance of her employment

2 safe and well constructed apparatus, appliances, and machinery, but the said defendant, notwithstanding his duty in the premises, assigned plaintiff to work upon a certain mangle, or ironing machine, that was an unsafe, ill-constructed, dangerous and defective apparatus, or machine, all of which was

unknown to plaintiff; and the plaintiff says, that because of the unsafe, ill-constructed, dangerous and defective apparatus, or machine, and without any fault, or negligence on her part, while in the performance of her duty, and while attempting to feed a table-cloth in said apparatus, or machine, her left hand was caught in said machine and mashed and burned; and said left hand of plaintiff was so badly mashed and burned, that it became necessary thereafter, to wit, on January 11, 1902, to have same amputated; and the plaintiff claims that she has been damaged by reason of said injuries in the sum of ten thousand dollars.

Wherefore, plaintiff claims the sum of ten thousand dollars, besides the costs of this suit.

The plaintiff, Lillian S. Butler, sues the defendant, John D. Frazee, for that heretofore, to wit, on the 28th day of December, 1901, defendant was proprietor of, and engaged in the business of conducting a certain steam laundry plant located in the building No. 2121 E street, N. W., in the city of Washington, District of Columbia; that on the date aforesaid the plaintiff was an employee of said defendant, and in the course of her duty it became, and was, necessary to use certain mangles or ironing machines; and it then and there became and was the duty of said defendant to have said mangles, or ironing machines and other apparatus, appliances and machinery in good and safe condition and repair to be used by his employees; and said defendant, notwithstanding his said duty in the premises, required plaintiff to use in performance of her duty an unsafe and broken apparatus, appliance and machine, in bad condition and repair, all of which was unknown to plaintiff; and plaintiff says that because of the unsafe and broken condition and repair of said apparatus, appliances and machinery for ironing, commonly known as a mangle, or ironing machine, and without any fault or negligence on her part, while in performance of her duty, and while attempting to feed a table-cloth in said apparatus, appliances or machinery aforesaid, her left hand was caught in said apparatus, appliances or machinery and mashed and burned; and said left hand of plaintiff was so badly mashed and burned that it became necessary thereafter, to wit, on the 11th day of January, 1902, to have same amputated, and plaintiff claims that she has been damaged by reason of said injuries in the sum of ten thousand dollars.

Wherefore, plaintiff claims the sum of ten thousand dollars, besides the costs of this suit.

JOHN C. GITTINGS,
ULYSSES BUTLER,
Attorneys for Plaintiff.

3 The defendant is to plead hereto on or before twen*tieth* days, exclusive of Sundays and legal holidays, occurring after the service hereof; otherwise judgment.

JOHN C. GITTINGS,
ULYSSES BUTLER,
Attorneys for Plaintiff.

Defendant's Plea.

Filed Feb. 20, 1903.

In the Supreme Court of the District of Columbia.

Law. No. 45829.

LILLIAN S. BUTLER, Plaintiff,
vs.
JOHN D. FRAZEE, Defendant.

Comes now the defendant by his attorneys, and for plea to the declaration filed in the above entitled case, says he is not guilty in manner and form as therein alleged.

MORGAN H. BEACH,
LEONARD J. MATHER,
Attorneys for Defendant.

Joinder of Issue.

Filed Feb. 25, 1903.

In the Supreme Court of the District of Columbia.

At Law. 45829.

LILLIAN S. BUTLER, Plaintiff,
vs.
JOHN D. FRAZEE, Defendant.

The plaintiff joins issue upon the defendant's plea.

JOHN C. GITTINGS,
U. S. BUTLER,
Att'ys for Plaintiff.

Memorandum.

April 13, 1904.—Verdict for defendant.

4 Supreme Court of the District of Columbia.

FRIDAY, *May* 13, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

At Law. No. 45829.

LILLIAN S. BUTLER, Pl'ff,
v.
JOHN D. FRAZEE, Def't.

Upon hearing the motion of the plaintiff for a new trial, it is considered that the same be, and hereby is, overruled, and judgment on verdict ordered: Therefore it is considered that the plaintiff take nothing by her suit, and that the defendant go thereof without day and recover against the plaintiff his cost of defense to be taxed by the clerk, and have execution thereof.

The plaintiff notes an appeal to the Court of Appeals, and the bond on such appeal is fixed in the penalty of one hundred dollars.

Memoranda.

May 19, 1904.—Appeal bond filed.

June 10, 1904.—Time to settle exception extended to August 15, and to file record to September 1, 1904.

Supreme Court of the District of Columbia.

TUESDAY, *August 9th*, 1904.

Session resumed pursuant to adjournment, Hon. Job Barnard, justice, presiding.

* * * * * * *

No. 45829. At Law.

LILLIAN S. BUTLER, Plaintiff,
vs.
JOHN D. FRAZEE, Defendant.

Comes now the plaintiff herein by her attorney, and presenting to the court the bill of exceptions taken at the trial of this cause, prays that the same be signed and made of record, now for then, which is accordingly done, and further the time to file transcript of record in the Court of Appeals, is hereby extended to October 15th, 1904 inclusive.

5 *Bill of Exceptions.*

Filed August 9, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 45829.

LILLIAN S. BUTLER, Plaintiff,

vs.

JOHN D. FRAZEE, Defendant.

Be it remembered that at the trial of the above entitled cause which came on for hearing on the 6th, 7th, 11th and 12th days of April, 1904, before one of the justices of the supreme court of the District of Columbia, and after a jury was duly qualified and sworn, the plaintiff, in order to prove the issues on her part joined, offered and gave evidence tending to prove as follows:

That the defendant is and in the year 1902 was, the owner of a steam laundry in the city of Washington, in which laundry was used a machine for drying and ironing clothes called a mangle. Said mangle consisted essentially of a steel cylinder four feet in diameter and eight feet long, which was heated by steam under a pressure of eighty pounds to the square inch, and was made to revolve in such a way that the surface next to the operator moved upward and away from her. Resting upon the upper half of the surface of the said cylinder were five rollers, which were held in place by attachments of the stationary frame of the machine, and which revolved in a direction opposite to that of the cylinder, the said rollers being set each at a distance of about six inches from the next. The purpose of the mangle was to iron and dry the clothes by carrying them over the surface of the cylinder and under the rollers, and it was the duty of the operators feeding the machine to introduce the edge of the article to be ironed between the cylinder and the first roller. For this purpose two operators were necessary, one standing at each side of the mangle and directly in front of the steam cylinder. A part of the machine intended to facilitate the feeding thereof, was a board, called the feed board which was attached to the frame of the mangle and extended across the machine, just in front of which the operator stood. This feed board was eight feet long, extended from side to side of the mangle, was twelve to fifteen inches wide, two and a half inches thick, and weighed about sixty pounds. The inner edge of the feed board was beveled, so as to fit closely to the surface of the cylinder, and the feed board was so fixed in place by bolts that the inner edge was as close to the cylinder as it could be without causing friction.

It was the duty of the operators feeding the mangle to spread the article to be ironed while damp but having been smoothed out by the hands upon the surface of the feed board, and to grad-
6 ually push the same across the said board in such manner that the inner edge of the article should touch the surface of

the cylinder, and being carried upward thereby, should be engaged by the first of the rollers, and so be drawn in between the cylinder and the rollers. To this end it was necessary for the operators to place the palms of their hands flat upon the article to — ironed, so as to produce sufficient pressure for the purpose.

The first roller was about four inches above the feed board. For the safety of the operators, the machine was equipped with a safety apparatus called a finger-guard. This was a bar of steel, eight feet long, three inches wide, and one-eighth of an inch thick, fixed to the frame of the machine and extending horizontally from side to side thereof, in front of the cylinder and about four inches distant from its revolving surface. Said guard was adjustable within certain limits and might be set at a height above the feed board for one-quarter of an inch to four inches. In the mangle used by the defendant, the guard had been originally adjusted at a height of one and one-half inches above the feed board, and had always been in that position, and was so at the time of the accident hereinafter mentioned.

The plaintiff entered the employ of the defendant in the month of May, 1902, and in October of that year was assigned to the duty of assisting in feeding the mangle hereinbefore described. She was about twenty-two years of age and had had about two years' experience in the operation of mangles in other laundries; that all the mangles she had operated were equipped with safety-devices or finger guards which prevented the operators' hands from coming into contact with the steam cylinder; that during her entire experience in the defendant's and other laundries she had never known or heard of anyone being injured while feeding a mangle by reason of their hands coming into contact with the steam cylinder of a mangle equipped with the safety-device or finger-guard-rail; that prior to beginning to operate defendant's mangle, plaintiff saw that same was equipped with a finger guard rail; that she had never been warned by anyone that said mangle was more dangerous than any of the other machines she had previously operated, nor that the guard rail was improperly adjusted, in that it was too high and would permit of her hands being drawn under same and coming into contact with the cylinder, nor was there anything about the machine to lead her to believe that it was any more dangerous than any other mangle she had operated; that prior to the accident plaintiff did not know, nor had she been warned, nor had she any reason to suppose that the finger-guard-rail had been adjusted so high that it would permit of her hands being drawn under it into the machine; she did not know just how far the finger-guard-rail was placed from the cylinder. From the position in which she stood in feeding the machine she could not see the point where the first roller came in contact with the steam cylinder, her view being obstructed
7 by the finger-guard-rail; that her hands had never been brought into contact with the steam cylinder before, nor had her hands ever been carried under the guard rail previous to the injury.

The plaintiff gave evidence tending to show that her duty con-

sisted in feeding the linen to the machine while standing on the left hand side of same; that the feed board next to the cylinder on the left hand side was loose and worn; that such was its condition when plaintiff first began to operate it in October, 1902, and so remained up to the time of the injury; that this defect permitted the linen while being fed into the machine to catch on the right hand side, while at times falling or dropping between the edge of the feed board and the steam cylinder on the plaintiff's side.

The plaintiff, from the time aforesaid in October, when she was assigned to feeding the said mangle, until the 28th day of the following December, was continually and daily employed upon the said machine. During this period she did not report any defect in the construction, adjustment or repair of the machine, nor did she make any complaint of its condition, or request any alterations to be made.

On the 28th day of December, 1902, in the morning, the plaintiff was engaged in feeding the said mangle, standing on the left hand side as she had been accustomed, and another young woman was feeding at the right hand side thereof. While so engaged, the left hand of the plaintiff was in some manner carried between the cylinder and the first roller and so injured that amputation thereof became necessary. The manner of the said accident was thus stated in the testimony of the plaintiff herself:

A. "Why, the morning of the accident nearly every piece we put in the mangle, Miss Cumberland's end would go in before mine and I would have to push, and my hand caught on. * * * A. The morning of the accident nearly every piece would catch on Sydney's side before it would catch on mine; and the table cloth would take my hand right on up with it. It dropped down between the board and the cylinder, and when it caught, it carried my hand right on up with it. * * * A. Well, the linen would drop down between the board and the cylinder and you had to push it up. Q. Do you mean us to understand that you put your hand deliberately inside this finger guard and down into the space between the feed board and the cylinder? A. No, sir. Q. How did the linen drop? A. The linen instead of going in would drop down between the board and the cylinder and you would push it up, and the young lady working on the other side, hers would catch before mine. Q. You had to get hold of the end in some way to push it up? A. No, sir; you had to push it up the feed board. Q. If the edge of the linen you were feeding had dropped down between the feed board and the cylinder, how could you push it up? A. You could push it up and it would come down wrinkled. Q. If it had dropped down between
8 the feed board and the cylinder, how could you push it up? A. It dropped down between the feed board and the cylinder, and when you pushed it up and it came out of the mangle it would come out wrinkled. Q. You did not hold the table cloth as it fed into the machine? A. Yes, I had hold of the table cloth. Q. You pushed the table cloth over the feed board; but you could not catch hold or it, as a matter of fact? A. I had hold of the table cloth and was pushing it up and it dropped. And this day it was worse;

every piece we put in it dropped down and we had to push it up; and as I pushed it up in some way or other it took my hand with it. Q. You say it was getting worse? A. Yes. We had to sprinkle the clothes every day, and this day we had to sprinkle the clothes more than ever. Q. And that is the only day you put your hand inside the finger guard? A. Yes. Q. Why did you put your hand inside then? A. I didn't put my hand inside. The table cloth pulled it in. My hand was on the table cloth pushing it up, and the table cloth caught and it caught my hand with it. Q. On this particular occasion even you didn't push you- hand inside the finger guard? A. No, sir. I didn't put my hand under the finger guard until the table cloth pulled it under. Q. So the table cloth had hold of your hand before your hand had gotten past the finger guard? A. The table cloth dropped and I gave it another push to make it catch and after it dropped it caught it on the cylinder and carried my hand right with it. Q. So that your hand had gone past the finger guard before the table cloth caught it and carried it into the mangle? A. The table cloth took my hand right along with it. Q. What I want to find out is the exact time that this table cloth became wrapped around your hand in such a way as to take it into that mangle? A. The table cloth dropped. Sydney's end had gone in and my end had dropped, and I pushed it and it caught. As soon as the table cloth—it caught and after it caught in some way it took my hand right up with it. Q. Where did it drop? Between the feed board and the cylinder? A. Between the feed board and the cylinder. Q. And it was not until after it dropped that your hand was caught? A. It dropped between the feed board and the cylinder, and I had my hand on the feed board to make it catch, and my hand caught and went right up with it.

No other evidence was given upon either side as to the cause and manner of the accident, and it did not appear that any other person had observed the position of the plaintiff's hands, or the condition of the cloth before or at the time when her hand went under the finger-guard.

The plaintiff offered further evidence tending to show that, upon the occurrence of the accident, the machinery was stopped, the roller lifted, and her hand taken out. It was found that the edge of the table cloth, which was the article in process of mangling when the accident occurred, had been folded back over the fingers and was clasped in the palm of the hand.

The plaintiff offered further evidence of experts in the
9 conduct of laundries and in the operation of laundry machinery to the effect that the sole purpose of the finger-guard was to prevent the fingers of the operator from coming in contact with the cylinder and that the same could be so adjusted as to prevent such accident; that there was no kind of laundry work which required an adjustment of the guard at more than half an inch above the feed board; and that an elevation of three-quarters of an inch would lessen its value as a guard.

And here the plaintiff rested.

And thereupon the defendant to maintain and prove the issues on his part joined, offered and gave evidence tending to prove that the defendant had provided a fit, proper and safe mangle for the work in his laundry; a machine of standard and approved pattern—it being one of the best of some half dozen leading "makes." He did not give and had never given his personal attention to its operation or supervision, and exercised no management or control whatsoever over the same, as he employed for that purpose one Broadbent, as superintendent, and one, Whitney, as a foreman, whose duty it was to inspect, look after and keep in good and safe repair, and in proper and fit condition, all the machinery furnished for the operation of his laundry plant by the said defendant. Broadbent, a doubly licensed engineer, had been directly engaged in mechanical work for about fifteen years and had followed it all his life. He had taken entire charge of the defendant's machinery since his employment of a little over four years, erecting, adjusting, repairing and keeping it in good order personally. Whitney, also an engineer, who had served his time a number of years ago as a mechanic, had been with the defendant seven or eight months and had entire charge under Broadbent of the inside plant, the working plant of the laundry—the marking and counting of goods, the charge of all employees and their operation of the machines, and the getting out of the work generally, and he made a personal daily inspection of all the machinery to see that it was in thorough order and repair. The defendant further gave evidence tending to prove that the feed board was not worn and was properly adjusted, having been moved to its proper position and bolted immovably in place about five weeks before the accident, in order to correct some slight trouble experienced before that time from the dropping of the linen between the feed-board and the cylinder; that the operators when pushing the linen over the feed-board raised their hands in such a manner as to permit them to shove it with their fingers instead of the palms of their hands, which not only afforded better control over the damp linen, but prevented their hands from going under the finger-guard; that the finger-guard at the time of the accident was at the same height and in exactly the same position as when the machine had been first adjusted; that the height of one and one-half inches was considered best suited and adapted for the character of work done at the laundry, as a lower adjustment caused the wrinkled edges of the half dried heavy work to catch the finger-guard and turn over; that this finger-guard, painted red, was securely bolted into place, and was in full view of the operators, serving as a warning not to put their hands underneath; that no complaint of the dangerous nature of the machine, or expression of distaste at being placed at work on the left-hand side of the mangle, showing any disinclination for the work, was ever made by the plaintiff; that the finger-guard was three or four inches from the cylinder and six or seven inches from the point where the first roller meets the cylinder, where sufficient friction is first encountered to take any object up into the mangle; that the finger-guard could be adjusted from one to four inches to suit the various styles and char-

acter of the work; that other than the warning conveyed by the finger-guard, there was the heat from the steam cylinder, which would have indicated its proximity to any one whose hand had approached it, although even after the cylinder was reached, it was some three or four inches to the point where there was friction sufficient to overcome the slightest effort of withdrawal; that plaintiff had never put her hand underneath or inside the finger-guard—the table cloth in some way taking her hand from outside, where she had been feeding, and carrying it up into the machine; that when her hand was taken out the edge of the table cloth was shown to be turned back over the top of it to about the middle of the hand, while the under portion of the cloth was clenched in the palm of her hand; that from where the operators stood they could see plainly over the rail of the finger-guard about how far it was to the revolving cylinder which was in plain sight, and distant from where the operators were standing, less than two feet.

And here the defendant rested.

Whereupon, the testimony being announced closed on both sides, and the aforegoing being all the testimony that was offered in the case, the defendant moved the court to instruct the jury to render a verdict for the defendant upon the ground that the plaintiff had failed to show any negligence on the part of the defendant which caused the injury.

The trial court upon the ground above stated held that as a matter of law, upon the testimony adduced, the plaintiff was not entitled to recover and instructed the jury to render a verdict for the defendant, to which ruling of the court the plaintiff then and there excepted, which exception was duly allowed, and the jury returned a verdict for the defendant in accordance with the court's said instructions.

Said exception as stated in the foregoing bill of exceptions was duly noted by the court on its minutes at the time same was taken as the exception taken at the trial of the above cause this 9th day of August, A. D., 1904, *nunc pro tunc*.

JOB BARNARD, *Justice*.

11 Settled by consent.

C. A. KEIGWIN,
Attorney for Defendant.
BEACH & MATHER,
JOHN C. GITTINGS,
Att'y for Plaintiff.

Order for Transcript of Record, etc.

Filed Sept. 16, 1904.

The Supreme Court of the District of Columbia.

At Law. No. 45829.

BUTLER
vs.
FRAZEE.

John R. Young, clerk:

Please make up the transcript of record for the Court of Appeals in the above entitled case and include therein the following papers and no other.

1. Pleadings. Declaration, pleas and joinder of issue.
2. Bill of exceptions.
3. Notice of appeal and appeal bond.
4. The usual and necessary orders of the court.

JOHN C. GITTINGS,
Att'y for Plaintiff.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 21, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 45,829, at law, wherein Lillian S. Butler is plaintiff, and John D. Frazee is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 12th day of October, A. D. 1904.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1485. Lillian S. Butler, appellant, *vs.* John D. Frazee. Court of Appeals, District of Columbia. Filed Oct. 12, 1904. Henry W. Hodges, clerk.

12 THURSDAY, *March 9th, A. D.* 1905.

No. 1485.

LILLIAN S. BUTLER, Appellant,
vs.
JOHN D. FRAZEE.

The argument in the above entitled cause was commenced by Mr. J. M. Chamberlin, attorney for the appellant.

FRIDAY, *March 10th, A. D.* 1905.

No. 1485.

LILLIAN S. BUTLER, Appellant,
vs.
JOHN D. FRAZEE.

The argument in the above entitled cause was continued by Mr. J. M. Chamberlin, attorney for the appellant, and by Messrs. L. J. Mather and C. A. Keigwin, attorneys for the appellee, and was concluded by Mr. J. C. Gittings, attorney for the appellant.

13 No. 1485.

LILLIAN S. BUTLER, Appellant,
v.
JOHN D. FRAZEE.

Opinion.

(Mr. Chief Justice SHEPARD delivered the opinion of the Court:)

This action was brought by the appellant as plaintiff in the Supreme Court of the District of Columbia to recover damages occasioned by the negligence of her employer, the appellee.

The bill of exceptions recites that the plaintiff offered evidence tending to show:

That the defendant is and in the year 1902, was, the owner of a steam laundry in the city of Washington, in which laundry was used a machine for drying and ironing clothes called a mangle. Said mangle consisted essentially of a steel cylinder four feet in diameter and eight feet long, which was heated by steam under a pressure of eighty pounds to the square inch, and was made to revolve in such a way that the surface next to the operator moved upward and away from her. Resting upon the upper half of the surface of the said cylinder were five rollers, which were held in place by attachments to the stationary frame of the machine, and which revolved in a direction opposite to that of the cylinder, the said rollers being set each at a distance of about six inches from the next. The purpose of the mangle was to iron and dry the clothes by carrying them over

the surface of the cylinder and under the rollers, and it was the duty of the operators feeding the machine to introduce the edge of the article to be ironed between the cylinder and the first roller. For this purpose two operators were necessary, one standing at each side of the mangle and directly in front of the steam cylinder. A part of the machine intended to facilitate the feeding thereof, was a board, called the feed board, which was attached to the frame of the mangle and extended across the machine, just in front of which the operator stood. This feed board was eight feet long, extended from side to side of the mangle, was twelve to fifteen inches wide, two and a half inches thick, and weighed about sixty pounds. The inner edge of the feed board was beveled, so as to fit closely to the surface of the cylinder, and the feed board was so fixed in place by bolts that the inner edge was as close to the cylinder as it could be without causing friction.

It was the duty of the operators feeding the mangle to spread the article to be ironed while damp but having been smoothed out by the hands upon the surface of the feed board, and to gradually push the same across the said board in such a manner that the inner edge of the article should touch the surface of the cylinder, and being carried upward thereby, should be engaged by the first of the rollers, and so be drawn in between the cylinder and the rollers. To this end it was necessary for the operators to place the palms of their hands flat upon the article to be ironed, so as to produce sufficient pressure for the purpose.

The first roller was about four inches above the feed board. For the safety of the operators the machine was equipped with a safety apparatus called a finger-guard. This was a bar of steel, eight feet long, three inches wide, and one-eighth of an inch thick, fixed to the frame of the machine and extending horizontally from side to side thereof, in front of the cylinder and about four inches distant from its revolving surface. Said guard was adjustable within certain limits and might be set at a height above the feed board for one-quarter of an inch to four inches. In the mangle used by the defendant, the guard had been originally adjusted at a height of one and one-half inches above the feed board and had always been in that position and was so at the time of the accident hereinafter mentioned.

The plaintiff entered the employ of the defendant in the month of May, 1902, and in October of that year was assigned to the duty of assisting in feeding the mangle hereinbefore described. She was about twenty-two years of age and had had about two years' experience in the operation of mangles in other laundries; that all the mangles she had operated were equipped with safety devices or finger guards which prevented the operators' hands from coming into contact with the steam cylinder; that during her entire experience in the defendant's and other laundries she had never known or heard of anyone being injured while feeding a mangle by reason of their hands coming into contact with the steam cylinder of a mangle equipped with the safety device or finger guard rail; that prior to
14 beginning to operate defendant's mangle, plaintiff saw that same was equipped with a finger guard rail; that she had never been warned by anyone that said mangle was more dangerous

than any of the other machines she had previously operated, nor that the guard rail was improperly adjusted, in that it was too high and would permit of her hands being drawn under same and coming into contact with the cylinder, nor was there anything about the machine to lead her to believe that it was any more dangerous than any other mangle she had operated; that prior to the accident plaintiff did not know, nor had she been warned, nor had she any reason to suppose that the finger guard rail had been adjusted so high that it would permit of her hands being drawn under it into the machine; she did not know just how far the finger guard rail was placed from the cylinder. From the position in which she stood in feeding the machine she could not see the point where the first roller came in contact with the steam cylinder, her view being obstructed by the finger guard rail; that her hands had never been brought into contact with the steam cylinder before, nor had her hands ever been carried under the guard rail previous to the injury.

The plaintiff gave evidence tending to show that her duty consisted in feeding the linen to the machine while standing on the left hand side of same; that the feed board next to the cylinder on the left hand side was loose and worn; that such was its condition when plaintiff first began to operate it in October, 1902, and so remained up to the time of the injury; that this defect permitted the linen while being fed into the machine to catch on the right hand side, while at times falling or dropping between the edge of the feed board and the steam cylinder on the plaintiff's side.

The plaintiff from the time aforesaid in October, when she was assigned to feeding the said mangle, until the 28th day of the following December, was continually and daily employed upon the said machine. During this period she did not report any defect in the construction, adjustment, or repair of the machine, nor did she make any complaint of its condition or request any alterations to be made.

On the 28th day of December, 1902, in the morning, the plaintiff was engaged in feeding the said mangle, standing on the left hand side as she had been accustomed, and another young woman was feeding at the right hand side thereof. While so engaged, the left hand of the plaintiff was in some manner carried between the cylinder and the first roller and so injured that amputation thereof became necessary. The manner of the said accident was thus stated in the testimony of the plaintiff herself:

A. "Why, the morning of the accident nearly every piece we put in the mangle, Miss Cumberland's end would go in before mine and I would have to push, and my hand caught on. . . . A. The morning of the accident nearly every piece would catch on Sydney's side before it would catch on mine; and the table cloth would take my hand right on up with it. It dropped down between the board and the cylinder, and when it caught, it carried my hand right on up with it. . . . A. Well, the linen would drop down between the board and the cylinder and you had to push it up. Q. Do you mean us to understand that you put your hand deliberately inside this finger guard and down into the space between the feed board and the cylinder? A. No, sir. Q. How did the linen drop? A. The

linen instead of going in would drop down between the board and the cylinder and you would push it up, and the young lady working on the other side, hers would catch before mine. Q. You had to get hold of the end in some way to push it up? —. No, sir; you had to push it up the feed board. Q. If the edge of the linen you were feeding had dropped down between the feed board and the cylinder, how could you push it up? A. You could push it up and it would come down wrinkled. Q. If it had dropped down between the feed board and the cylinder, how could you push it up? A. It dropped down between the feed board and the cylinder, and when you pushed it up and it came out of the mangle it would come out wrinkled. Q. You did not hold the table cloth as it fed into the machine? A. Yes, I had hold of the table cloth. Q. You pushed the table cloth over the feed board; but you could not catch hold of it, as a matter of fact? A. I had hold of the table cloth and was pushing it up and it dropped. And this day it was worse; every piece we put in it dropped down and we had to push it up; and as I pushed it up in some way or other it took my hand with it. Q. You say it was getting worse? A. Yes. We had to sprinkle the clothes every day, and this day we had to sprinkle the clothes more than ever. Q. And that is the only day you put your hand inside the finger guard? A. Yes. Q. Why did you put your hand inside then? A. I didn't put my hand inside. The table cloth pulled it in. My hand was on the table cloth pushing it up, and the table cloth caught and it caught my hand with it. Q. On this particular occasion even you didn't push your hand inside the finger guard? A. No, sir; I didn't put my hand under the finger guard until the table cloth pulled it under. Q. So the table cloth had hold of your hand before your hand had gotten past the finger guard? A. The table cloth dropped and I gave it another push to make it catch and after it dropped it caught it on the cylinder and carried my hand right with it. Q. So that your hand had gone past the finger guard before the table cloth caught it and carried it into the mangle? A. The table cloth took my hand right along with it. Q. What I want to find out is the exact time that this table cloth became wrapped around your hand in such a way as to take it into that mangle? A. The table cloth dropped. Sydney's end had gone in and my end had dropped, and I pushed it and it caught. As soon as the table cloth—it caught and after it caught in some way it took my hand right up with it. Q. Where did it drop? Between the feed board and the cylinder? A. Between the feed board and the cylinder. Q. And it was not until after it dropped that your hand was caught? A. It dropped between the feed board and the cylinder, and I had my hand on the feed board to make it catch, and my hand caught and went right up with it.

No other evidence was given upon either side as to the cause and manner of the accident, and it did not appear that any other person had observed the position of the plaintiff's hands, or the condition of the cloth before or at the time when her hand went under the finger guard.

The plaintiff offered further evidence tending to show that, upon

the occurrence of the accident, the machinery was stopped, the roller lifted, and her hand taken out. It was found that the edge of the table cloth, which was the article in process of mangling when the accident occurred, had been folded back over the fingers and was clasped in the palm of the hand.

The plaintiff offered further evidence of experts in the conduct of laundries and in the operation of laundry machinery to the effect that the sole purpose of the finger guard was to prevent the fingers of the operator from coming in contact with the cylinder and that the same could be so adjusted as to prevent such accident; that there was no kind of laundry work which required an adjustment of the guard at more than half an inch above the feed board; and that an elevation of three-quarters of an inch would lessen its value as a guard.

The defendant offered evidence tending to show that the mangle was of a standard and approved pattern, being considered the best of some half dozen leading "makes." That the machinery of the laundry was under the management and control of an experienced and competent superintendent and a foreman. That a daily inspection was made by the superintendent to see if the machinery was in thorough repair. That the feed board had been securely bolted some weeks before. That the operators were accustomed to pushing the linen with their fingers instead of the palms of their hands, which offered better control of the wet linen and prevented the hands from going under the finger guard. That the finger guard had been adjusted at a height of one and one-half inches when the mangle was installed and had so remained. That this adjustment was best adapted to the work of the laundry, a lower adjustment causing the wrinkled edges of the half dried heavy work to catch the finger guard and turn over. That the finger guard was securely bolted and painted red so as to serve as a warning not to put the hands underneath, and was in full view of the operators. That no complaint had ever been made by plaintiff and no dissatisfaction expressed. That the finger guard was 3 or 4 inches from the cylinder and 6 or 7 inches from the point where the first roller meets the cylinder. That the finger guard was capable of an adjustment of from 1 to 4 inches to suit the various styles and character of the work. That aside from the finger guard the heat of the steam cylinder would indicate danger, and from point of first contact therewith it was 3 or 4 inches to the point where there was friction sufficient to overcome the slightest effort at withdrawal. That from where the operators stood they could see plainly over the rail of the finger guard how far it was to the revolving cylinder which was in plain sight and less than 2 feet distant from where the operators stood.

The only substantial conflict between this evidence and that of the plaintiff is in respect of the capacity of the adjustment of the finger guard. Plaintiff's evidence tended to show that the space of the opening could be reduced to one-fourth of an inch.

The rule of law is well settled that it is the duty of the employer to provide suitable and reasonably safe machinery and appliances for the use of his employee, and that this duty can not be avoided by

entrusting its performance to some other employee. Patton *v.* T. & P. Ry. Co., 179 U. S. 658, 654, and cases cited.

Notwithstanding this duty rests upon the employer, there is no guaranty by him that the machinery and appliances provided are absolutely safe. Patton *v.* T. & P. Ry. Co., *supra;* W. & G. Ry. Co. *v.* McDade, 135 U. S. 554, 570; S. P. Ry. Co. *v.* Seley, 152 U. S. 145, 153; Asphalt Co. *v.* Mackey, 15 App. D. C. 410, 423.

Therefore, when an injury is received by an employee, while working with machinery or appliances provided for his operation or use, the fact of accident carries with it no presumption of neglect of duty on the part of the employer, as in the case of a passenger; for example, where there is a contract for safe carriage, and the burden rests upon the employee to show such negligence as an affirmative fact. "It is not sufficient for the employee to show that the employer may have been guilty of negligence; the evidence must point to the fact that he was. And where the testimony leaves the matter uncertain and shows that any one of half a dozen things may have brought about the injury, for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these half a dozen causes and find that the negligence of the employer was the real cause, when there is no satisfactory foundation in the testimony for that conclusion. If the employee is unable to adduce sufficient evidence to show negligence on the part of the employer, it is only one of the many cases in which the plaintiff fails in his testimony, and no mere sympathy for the unfortunate victim of an accident justifies any departure from settled rules of proof resting upon all plaintiffs. Patton *v.* T. & P. Ry. Co., 179 U. S. 658, 663.

The testimony of the plaintiff herself, and there was no other as to the immediate cause of the accident, lacks directness and certainty; and one can hardly escape the conclusion that she was not paying sufficient attention at the time to be able to say whether, as a matter of fact, it was due to the unsafe adjustment of the finger guard, or to her own careless handling of the cloth which she was engaged in pushing into contact with the revolving cylinder.

But assuming the soundness of the contention on her behalf, that her hand could not have been carried between the cylinders at all, if the finger guard had been so adjusted as to leave a space not exceeding one-half an inch, of which adjustment it was capable, instead of the actual space of one and one-half inches; and assuming also the truth of the testimony offered on her behalf tending to show that a space not exceeding one-half of an inch was ample for the proper operation of the mangle under all conditions, we are of the opinion that the court was right in directing a verdict for the defendant.

16 It plainly appears from the testimony of the plaintiff that she was twenty-two years of age at the time of the accident, and it must be presumed that she was possessed of ordinary intelligence. She had had about two years experience in operating mangles in other laundries before entering the service of the defendant. These, however, had all been equipped with finger guards adjusted so low as to prevent the operators' fingers from coming in contact

with the cylinders which engaged each other a few inches beyond. She entered defendant's service in May, 1902, had been assigned to duty as one of the operators of this mangle in October, and sustained the injury December 28 of the same year.

The space left in the adjustment of the finger-guard, assuming it to have been unusual and unnecessary, as well as dangerous, was unhidden and plainly visible. It was immediately under the plaintiff's eyes and in close proximity to her finger ends when she was constantly employed in pushing the cloth which passed under it into engagement with the ironing cylinders. It is inconceivable that this adjustment could have escaped the observation of the plaintiff during more than two months of this constant employment. Under such circumstances she must be presumed to have had knowledge of a condition which would necessarily have become known through the ordinary exercise of her faculties. The defect being obvious to one of plaintiff's intelligence and experience, the defendant was under no duty to instruct her in the performance of her services, or to correct it in the absence of any complaint or request made by her.

The doctrine of law is established beyond question, that where an employee undertakes and continues the use of defective and unsafe appliances, either with actual notice of such defect, or where the same is open to ordinary observation in the usual course of its use, he must be deemed to have accepted the risk of all danger reasonably to be apprehended from such use, and can not recover of his employer. S. P. Co. *v.* Seley, 152 U. S. 145, 155; W. & G. R. R. *v.* McDade, 135 U. S. 554, 570; T. & P. Ry. Co. *v.* Archibald, 170 U. S. 665, 673; Hayzel *v.* Railway Co., 19 App. D. C. 359, 371; Crowley *v.* Pacific Mills, 148 Mass. 228.

In the following cases, all of which were actions for injuries sustained by employees in the operation of mangles, recoveries were denied under the application of this doctrine to facts and circumstances of the same general nature as those shown in the case at bar. Connolly *v.* Eldridge, 160 Mass. 566, 570; Blow *v.* Yellowstone Park Asso., 86 Minn. 237, 239; Kennan *v.* Waters, 181 Pa. St. 247.

For the reasons stated the judgment must be affirmed, with costs; and it is so ordered.

Affirmed.

17 MONDAY, *April 17th, A. D.* 1905.

No. 1485, April Term 1905.

LILLIAN S. BUTLER, Appellant,
vs.
JOHN D. FRAZEE.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued

by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be, and the same is hereby, affirmed with costs.

Per Mr. CHIEF JUSTICE SHEPARD.
April 17, 1905.

THURSDAY, *June 15th, A. D.* 1905.

No. 1485.

LILLIAN S. BUTLER, Appellant,
vs.
JOHN D. FRAZEE.

On motion of Mr. J. C. Gittings, of counsel for the appellant, it is ordered by the Court that a writ of error to remove this cause to the Supreme Court of the United States issue, and the bond for costs is fixed at the sum of three hundred dollars.

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Lillian S. Butler, appellant and John D. Frazee, appellee, a manifest error hath happened, to the great damage of the said Appellant, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of February, in the year of our Lord one thousand nine hundred and seven.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

——— ———.

19 (*Bond on Writ of Error.*)

Know all men by these presents, That we, Lillian S. Butler, as principal, and James B. Homes, as surety, are held and firmly bound unto John D. Frazee in the full and just sum of Three hundred dollars to be paid to the said John D. Frazee certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of February, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between Lillian S. Butler against John D. Frazee a judgment was rendered against the said Lillian S. Butler and the said Lillian S. Butler having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said John D. Frazee citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Lillian S. Butler shall prosecute said writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

LILLIAN S. BUTLER, [SEAL.]
By JOHN C. GITTINGS, *Atty.*
JAMES B. HOMES. [SEAL.]

Sealed and delivered in the presence of—
J. M. CHAMBERLIN,
As to both.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1485. Lillian S. Butler, Appellant, *vs.* John D. Frazee. Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Feb. 19, 1907. Henry W. Hodges, Clerk.

20 UNITED STATES OF AMERICA, *ss:*

To John D. Frazee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein

Lillian S. Butler is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness; the Honorable Seth Shepard Chief Justice of the Court of Appeals of the District of Columbia, this 19th day of February, in the year of our Lord one thousand nine hundred and seven.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 19th day of February 1907.
LEONARD J. MATHER.

[Endorsed:] Court of Appeals, District of Columbia. Filed Feb. 19 1907 Henry W. Hodges, Clerk.

21 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 20 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Lillian S. Butler, appellant, *vs.* John D. Frazee. No. 1485, January Term, 1907, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 25th day of February A. D. 1907.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 20,608. District of Columbia Court of Appeals. Term No. 251. Lillian S. Butler, plaintiff in error, *vs.* John D. Frazee. Filed March 11th, 1907. File No. 20,608.

Office Supreme Court, U. S.
FILED.
DEC 1 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 36.

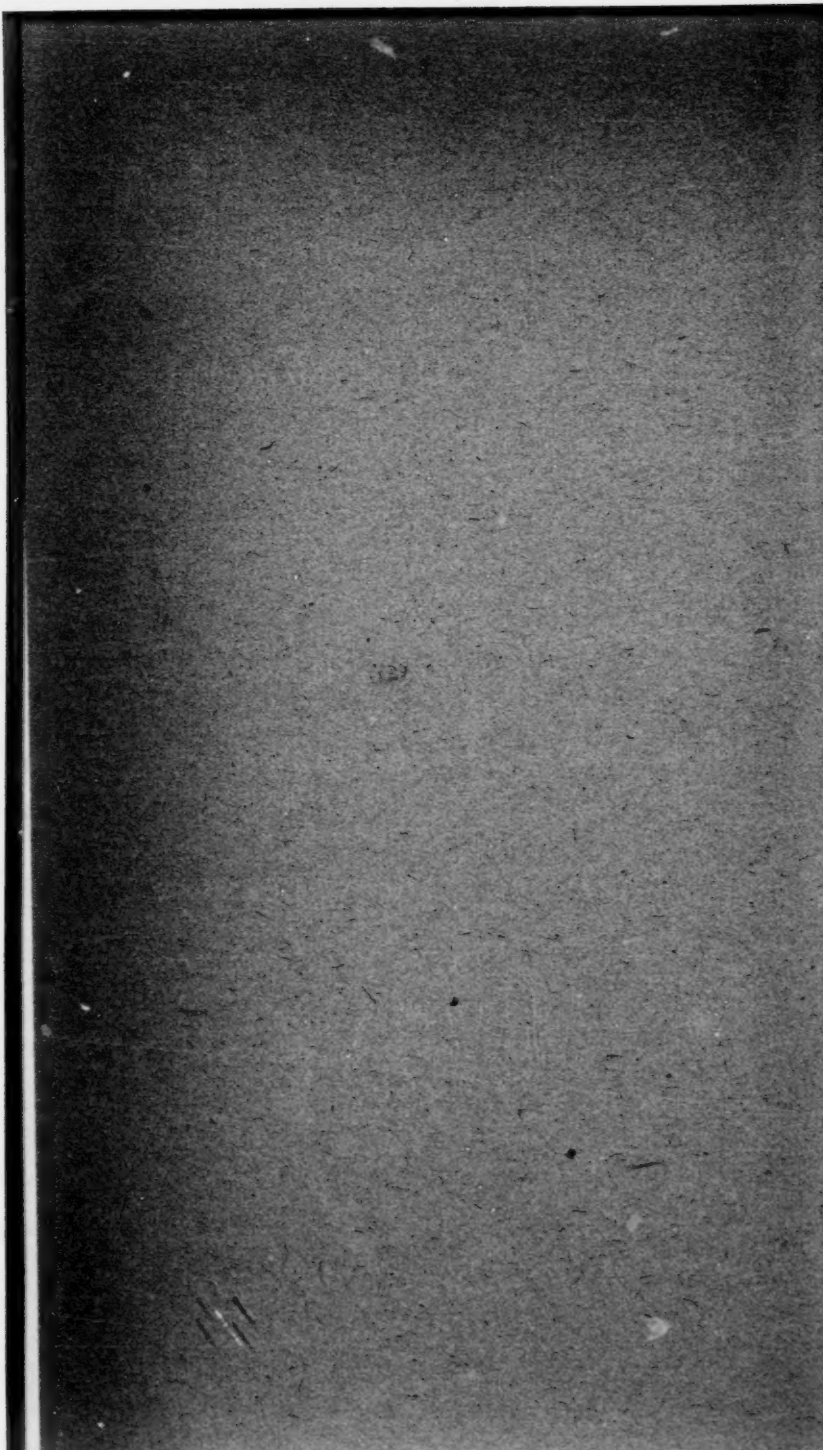
LILLIAN S. BUTLER, PLAINTIFF IN ERROR,

vs.

JOHN D. FRAZEE, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

JOHN C. GITTINGS,
JUSTIN MORRILL CHAMBERLIN,
Attorneys for Plaintiff in Error.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 36.

LILLIAN S. BUTLER, PLAINTIFF IN ERROR,

vs.

JOHN D. FRAZEE, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

This is a writ of error to the Court of Appeals of the District of Columbia to review the judgment of that court affirming the judgment of the Supreme Court of the District of Columbia rendered in favor of the defendant in error May 13, 1904.

STATEMENT OF CASE.

The action is one of trespass on the case brought by the plaintiff in error, who was employed in the laundry of defendant in error for damages sustained by the loss of her left hand. She alleges that the cause of the accident was the negligence of the defendant in adjusting too high a finger guard, which was attached to the mangle on which she was working, and that if the guard had been at a proper height her hand would not have been drawn under it and the accident could not have happened.

The declaration (R., 1) alleges that defendant was proprietor of a steam laundry situated at 2121 E Street northwest, in the city of Washington, District of Columbia, in which the plaintiff was employed. In the course of her employment it became necessary for her to use certain ironing machines, called mangles, and the defendant assigned her to work on a certain mangle that was unsafe, illy constructed and dangerous, which condition was unknown to her. That on December 28, 1901, while attempting to feed a table cloth into the mangle, her left hand became caught in the machine and was mashed and burned, which necessitated amputation of the hand at the wrist joint. That the injury was occasioned without fault or negligence on her part, while in the performance of her duty, and damages are claimed in the sum of ten thousand ($10,000) dollars. The evidence, as shown by the bill of exceptions (R., 5), developed the following facts:

That the plaintiff was about twenty-two years of age and had entered the employ of the defendant in May, 1902, and had had two years' experience in the operation of mangles in other laundries (R., 6), and had been working on the mangle in question for about three months prior to the injury. The mangle consisted of a steam cylinder four feet in diameter and eight feet long, heated by steam and revolved in such a way that the surface next to the operator moved upward and away from her. Five rollers rested upon the upper half of the surface of this cylinder and were held in place by attachment to the stationary frame of the machine and revolved in an opposite direction to that of the cylinder. The purpose of the mangle was to iron and dry clothes by carrying them over the surface of the cylinder and under the roller. Directly in front of the rollers was a feed board which was eight feet long, from twelve to fifteen inches wide, two and one-half inches thick and weighed about 60 pounds. The edge of this board next to the rollers, was beveled so as to fit as closely as possible to the surface

of the cylinder without causing friction. The article to be ironed was first smoothed out, while damp, over the surface of the feed board and gradually pushed across the board by the operators in such a manner that the inner edge of the article should touch the cylinder and being carried upward by it became engaged by the first of the rollers and thus ironed between the rollers and the cylinder (R., 6). In order to push the cloth across the feed board, and engage it between the cylinder and rollers, it was necessary for the operators to put the palms of their hands flat upon the article to obtain sufficient force. This feed board, next to the cylinder on the side on which plaintiff stood, was loose and worn, which defect permitted the linen at that end to drop down between the feed board and steam cylinder, while the other end, becoming engaged, would be drawn in. Thus the two edges in not becoming engaged simultaneously, the article would not be ironed smoothly. In order to prevent this, when the end dropped at the place where the board was worn, the operator would have to give her end of the article another push to make it catch (R., 8). The first roller was about four inches above the feed board. For the safety of the operators the machine was equipped with a safety apparatus called a finger guard. This was a bar of steel eight feet long, three inches wide and one-eighth of an inch thick, attached to the frame of the machine and extended all the way across directly in front of the cylinder and about four inches from its revolving surface. The guard was adjustable at a height from one fourth of an inch to four inches above the feed board. At the time of the accident the guard was adjusted at one and one-half inches above the feed board at which height it had been originally adjusted and so remained until after the accident (R., 6).

All the mangles on which the plaintiff had worked theretofore were equipped with safety devices, or finger guards, which prevented operators' hands from coming into contact with the cylinder, and during her entire experience in that

and other laundries she never heard of anyone being injured, while feeding a mangle, by their hands coming in contact with the steam cylinder if the mangle was equipped with a safety device or finger guard. The plaintiff saw that this mangle was equipped with a finger guard before she began work on it. No one had ever warned her that the mangle was more dangerous than previous machines she had operated, nor that the finger guard was adjusted at a height that would permit her hands to be drawn under it and into contact with the cylinder. There was nothing about the mangle to make her believe that it was more dangerous than any other she had operated, and she had not been warned, and did not know nor had any reason to suppose that the guard had been adjusted so high that her hands could be drawn under it into the machine. She did not know how far the guard was from the cylinder; and from where she stood feeding the machine she could not see the point of contact of the first roller and cylinder, as the guard obstructed her view. Her hands had never been brought into contact with the cylinder, nor had her hands ever been carried under the guard previous to the accident (R., 7). During the three months prior to the accident she was continuously employed in this work. On the morning of the day of the accident her hand became caught in a table cloth, which she was assisting to feed into the mangle, was carried under the finger guard and between the finger guard and first roller (R., 7). After the accident the machinery was stopped, the roller lifted and her hand taken out. It was found that the edge of the table cloth had been folded over the fingers and was grasped in the palm of her hand. She had never reported any defect in the construction, adjustment, or repair of the machinery, nor made any complaint of its condition nor requested alteration. Expert testimony was introduced by her showing that the sole purpose of the finger guard was to prevent the fingers of the operator from coming into contact with the cylinder, and that it could be so adjusted as to prevent such accident, and that there was no kind of laundry

work which required it to be adjusted at a height more than one-half inch above the feed board, and an elevation of three-fourths of an inch would lessen its value as a guard (R., 8).

The defendant offered evidence tending to prove that the mangle was of standard pattern and one of the best made, and that it was fit, proper, and safe; that it was under the management and control of his superintendent, Broadbent, and foreman, Whitney, and that he had no control over it, and it was their duty to inspect it and keep it in proper condition. Broadbent had always followed mechanical work, and was directly engaged in it for about fifteen years; had been employed by defendant a little over four years, and during that time had entire charge of defendant's machinery, which he personally erected, adjusted, repaired, and kept in good order. Whitney, the foreman, was also an engineer under Broadbent, and had entire charge of all employees and their operation of the machines and getting out the work generally, and made a daily personal inspection of all machinery to see that it was in thorough order and repair. The defendant's evidence further tended to prove that the feed board was properly adjusted and was not worn, and had been bolted immovably in its proper position about five weeks before the accident in order to correct some slight trouble experienced at that time, caused by the dropping of the linen between the feed board and the cylinder; that the operators pushed the articles over the feed board with their fingers instead of the palms of their hands, which not only afforded better control over the damp linen, but kept their fingers from going under the finger guard; that the finger guard at the time of the accident was at its proper height and in the exact position as when the machine was first adjusted, and that one and one-half inches was considered the best height for the character of the work they were doing, as a lower adjustment caused the wrinkled edges of the half-dried heavy work to catch against the finger guard and turn over; that this finger guard was painted red and securely bolted into place in full view of the operator, and served as a

warning not to put their hands beneath it; that plaintiff had never complained of the dangerous nature of the machine or expressed dissatisfaction at being placed at work on the left-hand side of the mangle; that the guard was from six to seven inches from the point of contact with the cylinder and first roller, where sufficient friction is first encountered to take the object into the mangle; that the mangle could be adjusted from one to four inches (R., 9) to suit the various styles of work; that in addition to the warning conveyed by the guard, the heat of the cylinder would indicate the proximity of the cylinder to any hand that approached it, and that even after the cylinder was reached it was three or four inches to the point of friction sufficient to overcome the slightest efforts of withdrawal; that plaintiff had never put her hand underneath or inside the finger guard, the table cloth in some way taking her hand from the outside, where she had been feeding, and carrying it up into the machine; that when her hand was taken out the edge of the cloth was shown to be turned back over the top of it to about the middle of her hand, while the upper portion of the cloth was clenched in the palm; that the operators from where they stood could plainly see, over the rail of the finger guard, how far it was to the revolving cylinder, which was in plain sight and which was less than two feet distant from where they stood.

This is in substance the whole of the testimony that was offered in the case. The defendant then moved the trial court to instruct the jury to render a verdict for the defendant on the ground that plaintiff had failed to show any negligence on the part of the defendant which caused the injury. The court sustained the motion and instructed the jury to render a verdict for the defendant, to which plaintiff noted an exception, which was duly allowed, and she appealed to the Court of Appeals of the District of Columbia.

The Court of Appeals affirmed the judgment of the Supreme Court of the District of Columbia, and a writ of error was sued out to this court.

ASSIGNMENTS OF ERROR.

1. *The court below erred in affirming the action of the trial court in holding as matter of law that the defendant in error was not guilty of negligence and directing the jury to return a verdict for the defendant.*

2. *The court below erred in holding as matter of law that plaintiff in error had assumed the risk.*

ARGUMENT.

Upon the record in this case the following are self-evident facts: The finger guard was placed upon the mangle, at its installation, for the sole purpose of preventing the operator's hands from coming into contact with the steam cylinder and dangerous machinery; that plaintiff, when going to work upon the mangle, knew the purpose of the guard and assumed it to be in proper condition, and that it would prevent her hands from being injured; that she did not observe its exact height, nor was her attention ever called to its exact height, she assuming that the same had been properly adjusted; that the angle from where plaintiff fed the machine she could not observe the steel cylinder; that the guard was placed about 1½ inches above the feed board, while ½ an inch was a sufficient elevation to have permitted the linen to properly pass into the machine; that although the guard was adjustable, the height was never changed; the guard could have been placed at an elevation which would have allowed the linen to properly pass into the machinery without coming in contact with it, and at the same time prevent the operator's hands from going thereunder.

If this is a correct statement of what the record contains, and we believe that it is, then this case narrows itself to the following proposition of law:

Whether or not the defendant in error, under the implied contract between employer and employee, was negligent in failing to so adjust the guard that it would prevent plaintiff's hands from coming into contact with the dangerous machinery.

In speaking of the obligation of a master not to expose servants, when conducting the master's business, to perils or hazards against which they may be guarded by proper diligence upon the part of the master, this court, speaking through Mr. Justice Harlan, says:

> "To that end the master is bound to observe all the care which prudence and the exigencies of the situation require in providing the servant with machinery or other instrumentalities adequately safe for use by the latter. * * * But it is equally implied in the same contract that the master shall supply the physical means and agencies for the conduct of his business. It is also implied, and public policy requires, that in selecting such means he shall not be wanting in proper care. His negligence in that regard is not a hazard usually or necessarily attendant upon the business. Nor is it one which the servant, in legal contemplation, is presumed to risk, for the obvious reason that the servant who is to use the instrumentalities provided by the master has, ordinarily, no connection with their purchase in the first instance, or with the preservation or maintenance in suitable condition after they have been supplied by the master." Hough's case, 100 U. S., p. 213.

This principle has been repeatedly reaffirmed by this Court in the following cases:

McDaniels' case, 107 U. S., p. 454.
Herbert's case, 116 U. S., p. 642.
Archibald's case, 170 U. S., p. 665.
McDade case, 191 U. S., p. 64.

We most respectfully contend that the facts show this obligation of the employer to the employee was not performed by

the defendant in the case at bar. Although the record shows there were two engineers and machinists under his employ, there was an absolute failure to ever adjust or inspect this finger guard rail in any manner from the time the machine was put up until the occurrence of the accident. At this point it may be well to suggest that no doubt the defendant will contend that if there was a defect in having the guard too high it was patent, and the plaintiff could, or should, have observed its height. This, we submit, is laying down a rule of action absolutely foreign to the law. It is a claim that a girl 22 years of age, ignorant of machinery, upon whom no duty rests to inspect it, could and must have seen the distance of the guard above the feed board and the danger incident thereto, while those upon whom the duty rested to so observe and protect her, in their own sworn statements admit that they did not notice up to the time of the injury that the guard was too high. Neither she, nor they, had heard prior to the injury to the plaintiff that anyone had been injured upon this mangle.

Although she may have known of the defects, this will not defeat her recovery unless she knew that the defect rendered the thing absolutely dangerous.

Hayzel *vs.* Ry. Co., 19 App. D. C., p. 372.

And as held in Russel *vs.* Ry. Co., 32 Minn., p. 234:

> "The master should inform the servant of the danger, and it is not enough that the servant knew or ought to have known the actual character and condition of the defective instrumentalities furnished for his use. He must also have understood, or by means of ordinary observation ought to have understood, the risks to which he was exposed by their use."

That this guard, remaining at the height of 1½ inches from the feed board, exposed plaintiff to an unnecessary danger is perfectly obvious from the fact of the accident. In the language of Mr. Justice Day, of this court:

> "It is so simple a task, one so devoid of all exigencies of expense, necessity, or convenience; so free of any consideration of skill, except that of the foot rule, and so entirely destitute of any element of choice or selection, that not to make such a construction safe is a conviction of negligence."
>
> Choctaw Railroad Co. *vs.* McDade, 191 U. S., 64.

In the McDade case the employee knew of the water spout and that it projected over the cars, while in the case at bar the evidence of all the witnesses is to the effect that the plaintiff did not know the height of the guard, or that she was subjected to the danger of having her fingers caught when feeding. In the McDade case, as in the case at bar, the injury was caused by the negligence of the employer in failing to provide and maintain sound and suitable machinery, structures, and instrumentalities, and in exposing his employees to risks beyond those necessarily incident to the employment.

In the case of Indermaur *vs.* Dame, L. R., 1 C. P., 288, Mr. Justice Willes said, very tersely:

> "No usage could establish that what was in fact unnecessarily dangerous was in law reasonably safe, as against persons towards whom there was a duty to be careful."

And, as said by this court, in the language of Mr. Justice Brewer:

> "It is the master who is to provide the place and the tools and the machinery, and when he employs one to enter into his service he impliedly says to him that there is no other danger in the place, the tools, and the machinery than such as is *obvious and necessary*. Of course, some places of work and some kinds of machinery are more dangerous than others, but that is something which *inheres in the thing itself, which is a matter of necessity and can not be obviated.*"

"But within such limits the master who provides the place and the tools and the machinery owes a positive duty to his employee in respect thereto. That positive duty does not go to the extent of the guarantee of safety, but it does require that reasonable precaution be taken to secure safety, and matters not to the employee by whom that safety is secured, or the reasonable precaution therefor taken. He has a right to look to the master for the discharge of that duty and if the master instead of discharging it himself sees fit to have it attended to by others that does not change the measure of obligation to the employee or the latter's right to insist that reasonable precaution shall be taken to procure safety in these respects."

B. & O. R. R. Co. *vs.* Baugh, 149, U. S., 386.

Can it fairly be said as matter of law from the facts in this case that the danger incident in having the finger guard 1½ inches in height was *"something which inheres in the thing itself, which is a matter of necessity and cannot be obviated?"*

"It is an unquestioned principle of law that the servant has the right to assume that the master has discharged this duty."

Pikesville R. R. Co. *vs.* Russell, 88 Md., 571.

Furthermore, such duty can not be delegated by the master to a servant so as to relieve the master of liability under the doctrine of a fellow servant, upon which point Mr. Justice Harlan, in the Hough case, quoting the court in the leading case upon the subject, said:

"The rule of law which exempts the master from responsibility to the servant for injuries received from the ordinary risks of his employment, including the negligence of his fellow servants, does not include the exercise of ordinary care in supplying and maintaining proper instrumentalities for the performance of the work required. One who enters the employment of another has a right to count on this duty, and it is

not required to assume the risks of the master's negligence in this respect. *The agents who are charged with the duty of supplying safe machinery are not, in the true sense of the rule relied on, to be regarded as fellow servants of those who are engaged in operating it. They are charged with the master's duty to his servant* (Ford *vs.* Fitchburg R. R. Co., 110 Mass. p. 241). And the master's duty is discharged 'when, but only when, it agents, whose business it is to supply such instrumentalities, exercise due care as well in their purchase originally as in keeping and maintaining them in such condition as to be reasonably and adequately safe for use by employees.'"

Wabash Ry. Co. *vs.* McDaniels, 107 U. S., p. 457.

Defendant argued in the court below, and we assume will argue here, that we offered no evidence to show the *actual* cause of the injury, the *causa causans*. In answer to this contention, we respectfully submit that we did offer such evidence, but as a matter of law were not required to go that far.

But even if this were so, the failure on the part of the defendant to perform the duty with which he was charged by the law, would unquestionably make him liable if the accident could have been prevented by the performance of such duty. There can certainly be no question in this case, that had the finger guard been adjusted at a safe and proper height the hand could have in no way been drawn under it and into the machine. It is sufficient for the plaintiff to show that with adequate and safe appliances the injury *might* not have happened. The defendant must prove conclusively that it *must* have happened in spite of his negligence.

David *vs.* Garrett, 6 Bingham, p. 724.
R. R. Co. *vs.* Reaney, 42 Md., p. 137.
Stergis *vs.* Kuntz, 165 Pa. St., p. 358.

This point was directly before this court in the Hayes case, 111 U. S., p. 228. An ordinance imposed the duty

upon the railroad company to build a fence at a certain point for the protection of the public, which it failed to do. A boy strayed on the tracks and was injured. Mr. Justice Matthews, in delivering the opinion, said:

> "It is further argued that the direction of the court below was right, because the want of a fence could not reasonably be alleged as the cause of the injury. In the sense of an efficient cause, *causa causans*, this is no doubt strictly true; but that is not the sense in which the law uses the term in this connection. The question is, was it *causa sine qua non*, a cause which if it had not existed the injury would have taken place, an occasional cause? and that is a question of fact, unless the casual connection is evidently not proximate. * * * It is necessary for the plaintiff to establish by evidence from which it may fairly be inferred that there is reasonable probability that the accident resulted from the want of some precaution which the defendant might and ought to have resorted to. * * * Evidence of the circumstances showing negligence on the part of the defendant, which may have been the legal cause of the injury to the plaintiff, should have been submitted to the jury."

From the facts in this record it is hard for us to conceive how it could be said that plaintiff in error had assumed the risk. Yet, the court below in its opinion states:

> "The space left in the adjustment of the finger guard, assuming it to have been unusual, and unnecessary as well as dangerous, was unhidden and plainly visible. It was immediately under the plaintiff's eyes and in close proximity to her finger ends, when she was constantly employed in pushing the cloth which passed under it into engagement with the ironing cylinder. It is inconceivable that this adjustment could have escaped the observation of the plaintiff during more than two months of this constant employment" (R., p. 18).

To arrive at this conclusion we submit the court must entirely disregard plaintiff's testimony. We presume the court was evidently of the opinion that the record stated that in the two years' experience plaintiff had had in other laundries the mangles used by her were "equipped with finger guards adjusted *so low* as to prevent the operator's fingers from coming into contact with the cylinder. * * *" (Rec., 17).

We respectfully submit this is a misconception of what the record states. On page 6, of record, it is stated:

> "That all the mangles she had operated were equipped with safety devices or finger-guards which prevented the operator's hands from coming into contact with the steam cylinder; that during her entire experience in defendant's or other laundries she had never known or heard of anyone being injured by feeding a mangle, by reason of their hands coming into contact with the steam cylinder of a mangle equipped with a safety device or finger-guard rail;" * * * that prior to the accident, plaintiff did not know or had she been warned, or had she any reason to suppose that the finger-guard rail had been adjusted so high that it would permit her hands being drawn under it into the machine; she did not know just how far the finger-guard rail was placed from the cylinder. From the position in which she stood in feeding the machine she could not see the point where the first roller came in contact with the steam cylinder, her view being obstructed by the finger-guard rail."

That the record is susceptible of the inference that plaintiff did notice the adjustment of the guard, we are free to admit, but to hold that it is an *irresistible conclusion*, in view of the plaintiff's testimony alone, we respectfully submit is contrary to all precedent. The only fair inference in our judgment to which the whole record is susceptible, is that neither the plaintiff, nor any other employee of the defendant, nor the defendant himself, nor those who stood in representative capacity, ever observed prior to the accident, that

the guard was adjusted too high, or that there was any danger to an employee in feeding same. In view of this fact can it be said that plaintiff knew that her hands were in danger and that she assumed the risk incident to this adjustment?

Having taken the view that plaintiff must have observed, that the guard was 1½ inches high, the court below, in its opinion, then says:

> "Under such circumstances she must be presumed to have knowledge of a condition which would necessarily have become known through the ordinary exercise of the faculties" (R., p. 18).

Is not this building an inference upon an inference? And is it not based upon an absolute disregard of the plaintiff's positive testimony to the contrary, which was absolutely uncontradicted, and directly in keeping with the only reasonable inferences that can be drawn from the defendant's testimony upon this point? Is it fair to say that this girl realized the danger incident to this adjustment of the finger-guard, in face of the fact that the defendant did not believe that it was dangerous, and the mechanics and engineers whose duty it was to properly adjust the machinery considered it perfectly safe?

But say that the adjustment was plainly observable, and consequently the law presumes that she did so observe its adjustment, does it necessarily follow that she realized by reason of that fact that it was a defect and thereby dangerous?

There is an unbroken line of authorities of this court down to the case of Texas and P. R. R. *vs.* Swearingen, 196 U. S., p. 51, we respectfully submit, to the effect that these are questions of fact to be determined by a jury, upon proper instruction.

Can it be said with any degree of fairness to the plaintiff in the case at bar that she reasonably could have apprehended, that she was assuming the danger of her fingers

coming in contact with the machine, when there had been placed on the machine an instrument for the sole purpose of safeguarding those fingers? Can there be any question in this case but that the defendant did not intend that his employee should assume the risks of her hands coming in contact with the steam cylinder? If so, why did he place this guard on the machine? There is absolutely no evidence which can be gathered from the record tending to show that the *plaintiff* knew of the defect, and that the defendant did not know of the defect. In fact, if any conclusion in respect to this particular can be drawn from the record, it would be that the defendant knew of this defect.

In contrast to the decision of the court below in this case, we respectfully call this court's attention to the case of Fronk *vs.* Evans City Steam Laundry Co., 70 Neb., 75. This case was decided in 1903, and it would be difficult to find two cases more alike in their facts.

The injury there sued for was incurred within six months from the time of the injury in our case and under circumstances almost precisely similar.

The trial court there also took the case from the jury, but the difference between the two cases lies in the important fact that the appellate court reversed the lower court on the very point upon which our Court of Appeals sustained it, that is: *Whether a guard rail attached to a mangle for the purpose of protecting the hand of the operator from being caught and drawn into the machine was properly attached and placed in position is a question for the court or jury.*

The facts in that case showed that the plaintiff, a girl of 15 years of age, was employed in defendant's laundry, and on the third day of her employment was put to work feeding a machine for ironing clothes, called a mangle. The mangle consisted of four large rollers, revolving over a heated steam chest. It had a table in front covered with a brass sheet. Above the table and running the entire length of the machine was a guard. Between the guard and the table was

the aperture through which the clothes were fed to the machine. The guard was to prevent the hand of the operator being dragged between the rollers. It was adjustable, and could be raised or lowered by the engineer, but the operator had nothing to do with the adjustment. A day and a half after working at the mangle, the plaintiff's hand was caught in a double roller towel she was passing through the machine, and dragged under the guard and between the rollers, and so crushed and burned that it had to be amputated.

In that case the machine was similar to the one in the case at bar, and was equipped with a finger guard of the same length and adjusted at the same height as in this case. The operator could give no better account of how the accident occurred than the plaintiff in this case. While in that case the operator was a minor, and had worked only a short time upon the machine, the court said that her own testimony showed that she had no lack of knowledge as to how the mangle should be fed, and that any instruction or information which might have been given her as to the manner of feeding the machine could not in the least tend to obviate the injury she received. Passing, then, to the complaint there made that the guard was improperly adjusted, the court said:

> "We are of the opinion that this was a question which should have been submitted to the jury. It appears without contradiction that the guard was placed on the machine for the purpose of protecting the operator and keeping her hand from coming in contact with the rollers. As before stated, the evidence tends to show that a space of one-fourth to one-half inch was sufficient through which to feed any of the clothes that were passed through this mangle. If there had been no guard, the danger of feeding the mangle would have been apparent to the operator, and she would have taken the risk of such open and apparent danger if she continued in the employment."

And in conclusion stated:

> "Where the master has placed a guard to protect the employee and to prevent his hand from being drawn into the machine, and where the guard when properly placed will have this effect, or will tend to prevent accidents, it is his duty to see that the guard is properly adjusted, and whether it be so or not is a question for the consideration of the jury."

Another interesting case directly in point is Stager *vs.* Troy Laundry Co., 38 Ore., 480. That action was based upon the alleged negligence of the managing agents of the defendant in adjusting or placing a guard rail too high, thereby allowing too much space, or too large an opening between the guard rail and the table. The defense was that the danger was obvious, and incident to the service in which the plaintiff was engaged and the risk was one which she assumed in her employment. The plaintiff was a woman of mature age and had been in the employ of defendant four years. The court in the course of the opinion said:

> "The authorities appear to be uniform and conclusive, that where a machine similar (to the one at bar) in principle is operated without a guard plate, the operator assumes the risk, for in such a case the method of operation is known, and the peril patent. (Citing O'Connor *vs.* Whittall, 169 Mass., 563; Hanson *vs.* Hammell, 107 Iowa, 171; Greep Bros. *vs.* Brown, 7 Kas App., 394; Jones *vs.* Roberts, 57 Ill. App., 56; Berger *vs.* St. Paul Rly., 39 Minn., 78; Hoyle *vs.* Laundry Co., 95 Ga., 34; Hickey *vs.* Taaffe, 105 N. Y., 26.)
>
> "In the case at bar there was a guard plate, which was evidently designed to lessen, if not to obviate, the danger incident to feeding fabrics within the aperture between the rollers, and if properly adjusted, would, no doubt, have afforded some protection, and it was the duty of the master to see that it was properly adjusted. * * * The evidence of the plaintiff tends to show that the guard was set an inch and a half above the table, and an inch and a half in front of

the aperture. She says her hand went under the guard without touching it, and that, if it had been properly adjusted, it would have skinned the whole back of her hand. If such was the adjustment, the guard was little protection, except as it may have served as a warning that there was danger behind it, for a woman's hand will readily pass within the space of an inch and a half as far as the plaintiff's was shown to have been drawn in. She further testified that in her estimation the guard was too high, and that, if it had been in any manner a protection her hand would not have been caught; that she had worked at other mangles without the guard rail on, and did not realize the danger with this machine, because of this guard plate for protection. Thus the testimony presents the question as to whether the guard plate was properly adjusted. It is insisted, however, that whether it was or not, the danger behind it was so apparent and obvious that the court could say, as a matter of law, that the plaintiff assumed the risk attending the service. If the guard plate was so adjusted as to give absolutely no protection at all, and this was at once apparent, the case would not be different from one where there was no attachment of the kind, and the risk would be obvious. But, if the adjustment does in fact give some protection, a prudent person would be led to place more or less reliance upon its availability; and, the nearer perfect the adjustment, the less would be the danger in operating the machine. It may, or may not remove the danger entirely. If it does, then implicit reliance may be placed upon it, and no one need apprehend any danger from the service. So, therefore, the danger becomes a matter of degree, depending upon the manner of the adjustment of the guard plate, which, being attached, the plaintiff affirms, she supposed was a protection, and therefore did not appreciate the real danger. Under these conditions we cannot say, as a matter of law, that she assumed the risk by accepting or continuing in the service, and the question was properly left to the jury for their determination."

See also 41 Ore., 141.

In conclusion we confidently and respectfully submit that the evidence in the case at bar unquestionably establishes the fact that there was neglect of duty on the part of the defendant and that the trial court erred in not submitting the case to the jury, and therefore the judgment of the Court of Appeals should be reversed and the case remanded to it to reverse their judgment and to remand the case for a new trial.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1908

No. 36

LILLIAN S. BUTLER, PLAINTIFF IN ERROR

v.

JOHN D. FRAZEE

BRIEF FOR DEFENDANT IN ERROR

The plaintiff in error was employed to operate a mangle in a laundry owned by the defendant in error, and, while thus engaged, her hand was caught in the machine and injured.

For this, she sued the defendant in error, alleging negligence.

In the evidence adduced at the trial, plaintiff in error attempted to show that the machine was unsafe and defective in two particulars: namely, first, that the finger-guard was not properly adjusted, so as to make it *impossible* for the operator's hand to be drawn into the machine; and, second, that the feed-board

was loose, and a space existed between said board and the cylinder, by reason of which, articles in process of mangling were liable to drop down into the machine, instead of going up through it.

The case coming on for trial in the Supreme Court of the District of Columbia, and all the evidence having been given on both sides, the Court directed a verdict for the defendant in error.

From the judgment thereafter entered, the plaintiff in error appealed to the Court of Appeals of this District. The judgment of the trial court there being affirmed, a writ of error was sued out, bringing the case to this court.

I

If the ill repair of the mangle—which seems to be the negligence relied on by the plaintiff in error—caused the injury, it was the negligence of fellow-servants.

Defendant in error had supplied a machine which was originally, and so far as its plan and structure appear, perfect and as safe as any other machine of its kind. He had given no personal attention to the operation of the laundry as to the matter of incidental daily repairs. The actual supervision of the machinery and the keeping of it in good order were committed to two fellow-servants of the defendant in error, both of whom are shown to have been expert machinists and thoroughly competent for that duty. If the maladjustment of the finger-guard and the neglect to keep the feed-board tightly fastened all the time constituted negligence, then said negligence was

caused by these fellow-servants, and not by the master.

There is, no doubt, a certain obligation incumbent upon the master to keep his machinery in proper repair, and this duty, so far as it is personal to himself, he cannot delegate. But in this case it is not pretended that the defendant in error had any actual knowledge of the conditions alleged as defects, nor can it be said that he was chargeable with constructive knowledge. It appears affirmatively that neither the plaintiff in error nor the other young woman who worked with her at feeding the mangle had ever reported the alleged derangements; that they had never complained of the conditions, and that no accidents had occurred in the laundry. To say that the defendant in error, Mr. Frazee, was constructively charged with a knowledge of the dangerous condition of the mangle, is to say that he was bound to know more about the dangers of the work than the women who performed it and the machinists who repaired the apparatus.

> "The master is not responsible for the want of repairs when he has neither actual nor constructive notice of their need; and this notice is not presumed, but must be proved by the servant. And it must be proved that he was chargeable with notice of the particular defect complained of."
>
> Shearman & Redfield's Negligence, sec. 194*a*.

Still further, such alleged defects in the mangle were incidental to its operation, and for that reason

beyond the scope of the master's duty of supervision and within the scope of the fellow-servants' duty.

> "The master is not expected to stand over each servant every moment, to discover instantly a defect in good materials and tools, caused by their careless use. Nor is he bound to keep such a close watch over the details of the work as to enable him to repair every deterioration in the instrumentalities of work, resulting from a servant's use thereof, as soon as it occurs." * * *

As was said in Whittaker *v.* Bent (167 Mass., 588, 589) by Mr. Justice Holmes, then a member of the Supreme Court of Massachusetts, and later quoted with approval by Mr. Justice Brewer in the Dixon case (194 U. S., 338):

> "The absolute obligation of an employer to see that due care is used to provide safe appliances for his workmen is not extended to all the passing risks which arise from short-lived causes."

McCann *v.* Kennedy, ante, 23.
Johnson *v.* Boston Towboat Co., 135 Mass., 209.
Moynihan *v.* Hills Co., 146 Mass., 586, 592, 593.
Bjbjian *v.* Woonsocket Rubber Co., 164 Mass., 214, 219.

And again:

> "The adjustment and adaptation of implements to the work in hand, according to its varying needs, belong to the sphere of servants, not of

masters, and therefore, a servant's negligence in these matters to the injury of a fellow-servant is not presumably imputable to the master."

Shearman & Redfield's Negligence, sec. 195.

In a well-reasoned case (Stroble *v.* Chicago Ry., 70 Iowa, 555, 558) the court remarked that a workman who had charge of or used implements or appliances in the performance of his work must preserve them in a condition which would render them fit for the purposes to which they were devoted. If they are exposed to wear or destruction from use, he must have repairs made, or, if he can properly restore them for use, he must do this himself. If such repairs cannot be done by him, he must report the fact to his employer or other person having charge of such work.

The adjustment of the finger-guard might reasonably be expected to vary from time to time, according to the character of the work done, and it was, therefore, appropriately the duty of the superintendent, foreman or machinist, or perhaps of the operator herself, to determine where the guard should be set. The loosening of the feed-board was an accident of the ordinary operation of the mangle, and its repair was properly committed to a fellow-servant, as the remedy of any other functional irregularity in the machine. The master's duty to provide safe machinery does not extend to keeping the same secure throughout the work, so far as such security depends upon the due performance of duty by fellow-servants.

Armour *v.* Hahn, 111 U. S., 313.
Patton *v.* Ry. Co., 179 U. S., 658.

And there is no obligation upon the master to keep the machinery free from defects where the defect producing the injury complained of is the consequence of the incompetency or neglect of a fellow-servant, for the master is not liable unless he has been negligent in providing the machinery or in employing the fellow-servant.

Wonder *v.* R. R. Co., 32 Md., 411.

II

The alleged defects were not such as to render the mangle unreasonably unsafe, and therefore unfit for use, for masters are not insurers.

The position taken by the plaintiff in error was that the finger-guard might have been so placed as to render it impossible for her hand to be drawn underneath it into the machine; and that a proper repair of the feed-board would likewise in some mysterious manner have made the accident impossible: whereas, while neither of these so-called defects had the least causal connection with the happening of this accident, as will hereafter be shown, yet, even if they had directly contributed thereto, it would not follow that the defendant in error was negligent in not making the apparatus absolutely safe, for masters are not insurers.

The finger-guard rail had been adjusted at a height of one and one-half inches when the mangle was installed, and had so remained; for this adjustment was best adapted to the work of the laundry, a lower

adjustment causing the wrinkled edges of the half-dried heavy work to catch in it and turn over (R. p. 9) as it was being shoved forward over the feed-board by the operators.

Plaintiff in error herself testified that the feed-board next to the cylinder on the left-hand side was loose and worn (R. p. 9); that such had been its condition ever since she had begun to operate it; that she worked upon it, on this side, daily from October, 1902, until the 28th of the following December, and during this whole period of three months, she did not report any defect in the construction, adjustment, or repair of the machine, and neither did she make any complaint of its condition, or request any alterations to be made (R. p. 7).

Defendant in error had supplied a machine which was originally, so far as its plan and structure appear, perfect, and as safe as any other machine of its kind. It was of standard and approved pattern, being considered the best of some half-dozen leading "makes." The machinery of the laundry was under the management and control of an experienced and competent superintendent—a doubly licensed engineer—a man who had had fifteen years' active experience in mechanical work, and who had followed this line of work all his life (R. p. 9). Daily inspection of all the machinery was had to see that it was in thorough order and repair, and there is not the slightest evidence tending to show that the defendant in error had any knowledge of this feed-board being loose; so that, granting for the sake of argument that it was loose, and supposing even that this looseness caused the accident, daily inspection had failed to disclose it, plaintiff in error, although having full knowledge

thereof, had never reported it, or called attention to it, and this defect was therefore latent so far as the defendant in error is concerned, for which no recovery could be had.

The Lizzie Frank, 31 Fed., 477.
Killman *v.* Robert Palmer, etc., Co., 102 Fed., 224.
Railway *v.* Fry, 131 Ind., 319.

In O'Neal *v.* Railway Company, 132 Ind., 110, the Court said:

> "The employer is not an insurer. It is the duty of the employees to use reasonable care to ascertain the ordinary perils of the service which they voluntarily enter, and they are presumed to take service with knowledge of such perils as are open and obvious."

In Wood *v.* Heiges, 83 Md., 257, it was furthermore said:

> "The master is, therefore, not an insurer of the servant's safety. He cannot be bound for his servant's injury, without being chargeable with some neglect of duty, measured by the standard of ordinary care. On the other hand, the servant is under an obligation to provide for his own safety when danger is either known to him or discoverable by the exercise of ordinary care. 'He must take ordinary care to learn the dangers which are likely to beset him.'"

Again was it held in Railway *v.* McDade, 135 U. S., at page 554, that:

> "Neither individuals nor corporations are bound, as employers, to insure the absolute safety of machinery or mechanical appliances which they provide for the use of their employees. Nor are they bound to supply the best and safest and newest of those appliances for the purpose of securing the safety of those who are thus employed."

The same principle of law was referred to by Mr. Justice Brewer in Dixon *v.* Northern Pac. Ry., 194 U. S., at page 346, in the following words:

> "The master does not guarantee the safety of place or machinery. His obligation is only to use reasonable care and diligence to secure such safety."

The fact that the finger-guard rail was set at the height best suited for the laundry business of the defendant in error, in no wise constituted negligence on his part. Far from it, for as was said by the late Chief Justice Alvey in Asphalt Co. *v.* Mackey, 15 App. D. C., 410, 425:

> "It is true, when the conduct of a party as an employer, using machinery in his work, amounts to negligence to the damage of his employees, in failing to keep his machinery or appliances in safe repair and operative condition, the law holds him responsible; but his responsi-

bility cannot be made to depend upon the varying notions or opinions of juries as to what kind or structure of machinery he should use in his work. Such a principle, if sustained, would tend to embarass all the industries of the country that are carried on by machinery, the most of which is attended with more or less danger to those operating the machinery. This view is taken and enforced by the Supreme Court of the United States in the case of Tuttle *v.* Ry. Co., 122 U. S., 189, 194, citing the cases of Richards *v.* Rough, 53 Mich., 212, and Hayden *v.* Smithville Mfg. Co., 21 Conn., 548, 558, in which the same principle is maintained."

Likewise in the case of Titus *v.* Bradford Ry. Co., 136 Penn. St., 618, it was held:

"Absolute safety is unattainable, and employers are not insurers. They are liable for the consequences, not of danger, but of negligence; and the unbending test of negligence in methods, machinery and appliances is the ordinary usage of the business. No man is held by law to a higher degree of skill than the fair average of his profession or trade, and the standard of due care, is the conduct of the average prudent man. The test of negligence in employers is the same, and however strongly they may be convinced that there is a better or less dangerous way, no jury can be permitted to say that the usual and ordinary way, commonly adopted by those in the same business, is a negligent way, for which liability shall be imposed. Juries must necessarily

determine the responsibility of individual conduct, but they cannot be allowed to set up a standard which shall, in effect, dictate the customs or control the business of the community."

So, too, in the case of Keenan *v.* Waters, 181 Pa. St., 247, wherein it was said:

> "In order to save himself from liability for accidents to his employers, an employer is not bound to provide the safest machinery or the newest or most approved appliances. 'If the machinery be of an ordinary character and such as can with reasonable care be used without danger to the employee; this is the limit of his responsibility, and the sum-total of his duty.'"

Even the fact that an appliance or method of construction is obviously unsafe, and that safer appliances and methods are on the market or in frequent use, does not make it negligence on the part of an employer to retain the unsafe apparatus. Some employments are essentially hazardous, and the unbending test of negligence in methods, machinery and appliances is the ordinary usage of the business.

> Southern Pacific Co. *v.* Seley, 152 U. S., 145.
> Tuttle *v.* Ry. Co., 122 U. S., 189.
> Randall *v.* R. R. Co., 109 U. S., 478.
> Weaver *v.* R. R. Co., 3 App. D. C., 436, 453.

In Coombs *v.* New Bedford Cordage Co., 102 Mass., 572, 585, Justice Hoar remarks that it cannot be doubted "that it is the legal right of every person to

carry on a business which is dangerous, either in itself or in his manner of conducting it, if it is not unlawful, and interferes with no right of other persons." Nor does the obvious danger in a machine make it incumbent upon the employer to adopt obvious means to remove the danger.

> Schroeder *v.* Car Co., 56 Michigan, 132.
> Wood on Master and Servant, Sec. 331.
> Wonder *v.* R. R. Co., 32 Md., 411.

It was not pretended that the mangle was of an unusual pattern, or exceptionally dangerous; on the contrary, it appears that it was of the best and most approved pattern, and very extensively in use in the laundry business. The particular mangle had been in use in practically the same condition for several months. The finger-guard had always remained in the position in which it was set when the machine was first installed. It had been placed there by the defendant in error in order that his work might properly be performed. The feed-board, plaintiff in error states, had been loose as long as she had been engaged in using it. Yet, this looseness was of so little consequence that she had never called the attention of the defendant in error to it; and so small, trivial and insignificant must this alleged defect have been, if, indeed, it existed other than in fancy, that the defendant in error, although using proper inspection, had failed to discover it.

> "It is not necessarily the duty of a purchaser of machinery, whether simple or complicated, to tear it to pieces to see if there be some latent

> defect. If he purchases from a manufacturer of recognized standing, he is justified in assuming that in the manufacture,proper tests were made of the different parts of the machinery, and that as delivered to him, it is in a fair and reasonable condition for use."

Thus authoritatively does the Supreme Court of the United States speak in Railway *v.* Elliott, 149 U. S., at pages 271, 272, and as these so-called defects were latent to defendant in error, it was not to be supposed that he should hazard conjecture of unknown defects, for, as is stated by Pollock in his admirable "Treatise on Torts" (p. 45):

> "A reasonable man can be guided only by a reasonable estimate of probabilities. If men went about to guard themselves against every risk to themselves and others which might by ingenious conjecture be conceived as possible, human affairs could not be carried on at all. The reasonable man, then, to whose ideal behavior we are to look as the standard of duty, will neither neglect what he can forecast as probable, nor waste his anxiety on events that are barely possible. He will order his precaution by the measure of what appears likely in the known course of things."

It can hardly be denied, therefore, that the machine was at least reasonable safe, and a jury could not have found for the plaintiff in error, except upon the theory that the defendant in error was bound to insure against the possibility of an accident.

III

The accident was not due to the alleged defects in the mangle.

The testimony of the plaintiff in error shows that she was utterly unable to give any account of the cause, or the manner of the happening of the accident. All she can tell us is that her hand was caught and drawn into the machinery from *outside* the finger-guard rail, for as she herself says:

> "I didn't put my hand inside. The table-cloth pulled it in. My hand was on the table-cloth pushing it up, and the table-cloth caught and it caught my hand with it. * * * I didn't put my hand under the finger-guard until the table-cloth pulled it under" (R. p. 8).

It will be observed from this testimony that her hand was carried by the table-cloth into the machine from *outside* the finger-guard rail.

Neither the adjustment of the finger-guard, therefore, nor the looseness of the feed-board, nor both these alleged defects, could have *caused* the accident.

The one was a mere condition existing at the time of the accident, without causative effect in bringing it about; the other, from the physical facts as shown by the testimony of the plaintiff in error herself, could not have been the efficient, proximate cause of the injuries of which she complained.

The purpose of the guard-rail was to serve as a warning to the operators not to allow their fingers and hands inside. That it served its purpose on this occasion is evident, for not only have we the word of

the plaintiff in error herself that she never put her hand inside the guard-rail (R. pp. 7, 8) and that this entanglement of her hand in the table-cloth occurred on the *outside* thereof, and therefore *outside* the danger zone, but as well do the facts in the record show circumstantially, yet, nevertheless, incontrovertibly, such to have been the case, for when the hand of plaintiff in error was released from the mangle, and disentangled from the table-cloth, the left-hand edge of the cloth had turned back over the top of her hand to about the middle of it, while the under portion of the cloth was clenched in her palm. (R. p. 10.) This, of course, enfolded her hand in such a way as that she could not withdraw it from the cloth, and the other side of the cloth having caught in the mangle, and being fed on up into the mangle, dragged the hand and arm of plaintiff in error into the machinery.

That the accident could not have been due to the looseness of the feed-board, which it is alleged caused the dropping of the linen on the left-hand side of this mangle, is all too evident; for, even supposing that the plaintiff in error had followed her end of the table-cloth with her hands inside the guard-rail, the fold must, from the very physical laws about us, have been formed on the underneath or reverse side from that on which the hand of the plaintiff in error rested, and could not have had anything to do with either enfolding or entangling it.

Not only then does the plaintiff in error fail to show that her hand became entangled because the finger-guard rail was *too high*, or because the linen was liable to fall between the loose feed-board and the cylinder, but from her own account of it, as well as

from the other facts in the case, is it demonstrated that neither the one nor the other of these alleged defects could possibly have caused the injuries received by her.

Therefore, for this want of proof connecting the accident with the alleged defects, and her inability to show that either or both of these said defects was the efficient, moving, proximate cause thereof, the plaintiff in error failed to make out her case.

> "Where an accident happens to an employee, the fact of the accident carries with it no presumption of negligence on the part of the employer. It is an affirmative fact for the employee to establish that the employer has been guilty of negligence. It is not sufficient, in such a case, to show that the employer may have been guilty of negligence; the evidence must point to the fact that he was. Where the testimony leaves the matter uncertain, and shows that any one of half a dozen things may have brought about the injury, for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these half-dozen causes and find that the negligence of the employer was the real cause, when there is no satisfactory foundation in the testimony for that conclusion. If the employee is unable to adduce sufficient evidence to show negligence on the part of the employer, it is only one of the many cases in which the plaintiff fails in his testimony, and no mere sympathy for the unfortunate victim of

an accident justifies any departure from the settled rules of proof resting upon all plaintiffs."

Patton *v.* Rwy., 179 U. S., 663, 664.

And likewise in the case of Wolf *v.* Downey (N. Y.), 51 L. R. A., 241, it was held that a person injured by a falling brick from a building where there were many contractors at work must show and "identify the person who set it in motion," and failing in this, although the doctrine of *res ipsa loquitur* applied, showing that the plaintiff suffered injury from some one, this was not enough to justify the case being submitted to the jury.

Again:

"Where there is no proof of *connection as cause* and all a jury can be given would be mere conjecture, the court will decide it as a matter of law."

Littlehale *v.* Osgood, 161 Mass., 340.

Mr. Pollock, p. 30, says:

"When complaint is made that one person has caused harm to another, the first question is whether his act was really the cause of that harm in a sense upon which the law can take action. The harm or loss may be traceable to his act, but the connection may be, in the accustomed phrase, too remote. The maxim 'In *iure non remota causa sed proxima spectatur*' is Englished in

> Bacon's constantly cited gloss. 'It were infinite for the law to judge the causes of causes, and their impulsions one of another: therefore it contenteth itself with the immediate cause; and judgeth of acts by that without looking to any further degree.' "

So, too, in Ry. *v.* Stebbing, 62 Md., 504, was it said:

> "The onus of proof is upon the plaintiff to trace the cause of his injury directly to the fault or neglect of the defendant, and to do this he must show circumstances under which injury was received."

In State of Maryland to use of Barnard, etc., *v.* Ry. Co., 60 Md., 555, it was held that the theory formed by plaintiff was a bare presumption and the case was properly withdrawn from the jury, for the onus of proving the negligence was on the plaintiff and he had failed to make out other than a purely conjectural case.

And in the case of Swart *v.* D. C., 17 App. D. C., 407, that—

> "Where an injury to one using a public highway or street follows from a defect therein united with some distinct, efficient cause, without which it would not have happened (unless such concurring cause be pure accident, as suggested by Chief Justice Shaw in Marble *v.* Worcester, 4 Gray, 395), the municipality is not liable. It is not enough that the defects may have contributed indirectly to the accident, but the injury must

> have been produced directly by the alleged defects, and this must have been shown to have been the sole cause of the injury."

In Schaffer *v.* Ry., 105 U. S., 249, a demurrer was sustained to a declaration, alleging plaintiff's testator was injured in a collision caused by the carelessness of the defendant, occasioning a disordered brain, which finally induced the sufferer to take his life. The suit was brought under a Virginia Statute, which gave the right of recovery for death caused by negligence. In affirming the judgment, Justice Miller, citing Ry. *v.* Kellogg, 94 U. S., 469, and McDonald *v.* Snelling, 14 Allen, 290, said:

> "The proximate cause of the death of Schaffer was his own act of self-destruction. It was within the rule of both of these cases, a new cause, and a sufficient cause of death."

So, wherever a new force or power intervenes, of itself sufficient to stand as the cause of misfortune, the other must be considered as too remote.

> Insurance Co. *v.* Tweed, 7 Wall., 52.

Other cases innumerable could be cited to the point that the negligence relied upon must be connected as *causa causans* with the injury complained of, and that the causative relation must be affirmatively established by the proof. It is plain that neither the loose feed-board, nor the maladjustment of the guard-rail, was the moving cause of the young woman's injuries. That the guard-rail was adjusted at a height sufficient to allow her hand to be drawn underneath, is no more than any other

mechanical antecedent that was incident to this mangle. Other openings and apertures were there through which her hand might have been drawn, and with as much reason could negligence have been charged to this defendant in error for permitting rollers on his mangle to be adjusted in such a manner as that they would permit of her hand being dragged underneath; for the rollers were no more indispensable, as placed, for the proper working of the machine, than was the finger-guard, adjusted at its height of one and one-half inches above the level of the feed-board. Both were but necessary conditions for the proper conduct of the business of defendant in error; neither the responsible, voluntary agent that caused the misfortune.

Plaintiff in error, then, having utterly failed to set up facts from which it might fairly be inferred that the space of one and one-half inches between the bottom of the finger-guard rail and the feed-board had anything at all to do with causing this accident; or that the alleged looseness of the feed-board had aught to do therewith, could not expect, or reasonably ask, a verdict of the jury, or that the jury be allowed to speculate and guess as to the "cause" of her injuries.

Very properly, therefore, and of strict legal right, was the action of the trial court in thus directing the verdict for the defendant.

IV

The defects complained of were open and obvious to the plaintiff in error, who, giving no notice thereof, thereby assumed them.

Whatever may have been the negligence of the defendant in error, the plaintiff in error could not

have failed to see and understand the risks of her hand being drawn into the mangle, if its entanglement with the table-cloth, or any other piece of linen, took place. If it be true that the space between the feed-board and the cylinder caused the linen to drop on the left-hand side of the mangle, the plaintiff in error knew that fact better than any one else. No mention of it was ever made by her prior to the happening of the accident. (R. p. 7.) She was twenty-two years of age, and had had about two years' experience in the operation of mangles in other laundries. She had been feeding on the left side of this particular mangle, day in and day out for nearly three months. (R. p. 6.) The mangle itself was in practically the same condition the whole of this time. (R. p. 7.) From where she stood at her daily task, the red-painted finger-guard rail stood confronting her as an ever-warning sign that there was danger beyond. The plaintiff in error did not deny that she understood the construction of the machine, and she must have known that if her hand went far beyond the finger-guard, it would be subjected to heat and pressure just as the articles she constantly fed into the mangle were heated and pressed. She could certainly see for herself, standing within two feet of the finger-guard, that its adjustment of one and a half inches above the feed-board left ample space for her to get her hand underneath; and, as the revolving cylinder was plainly in sight just beyond this red guard-rail, and as the rollers which held and pressed the linen against the steam cylinder were also within view, she must have known that this finger-guard rail marked the danger line beyond which she must not go save at her own risk. No complaint was ever made as to these so-called defects; and dur-

ing this whole period no notice of any sort was given by the plaintiff in error to the defendant, or his superintendent, Broadbent, as to the construction, adjustment or repair of the machine. (R. p. 7.)

That she herself says that she had no reason to suppose that the finger-guard rail had been adjusted so high as that it would permit of her hands going underneath (R. p. 6) is meaningless; for she was an intelligent, capable and experienced young woman.

As the Court of Appeals of Maryland in the Medairy case (86 Md., 168) very tersely and aptly said:

> "If a witness who can see testifies that although he looked, he did not see an object which, if he had really looked he must have seen, such testimony is unworthy of consideration."

The same idea found expression in the opinion of Mr. Justice Brown in Northern Pacific Railway *v.* Freeman (174 U. S., 379, 384).

Plaintiff in error must have known that her hand was less than an inch and a half in thickness, and certainly have realized that it would go through this space that she had measured with her eye thousands upon thousands of times as she had brought her hands within a few inches of, or actually in contact with, this rail-guard, in the carrying on of her work of feeding linen into this mangle for nearly three months. As well might she say that she did not know her hand would be burned if she thrust it against the steam cylinder; or that her hand would be crushed, if she allowed it to be carried into the machinery of the mangle, notwithstanding the fact that she had continuously seen the effect such process had had upon

the linen that she daily fed into this ironing machine for this very purpose.

Plaintiff in error also says she was not "warned" (R. p. 6). Warned of what, and why? Warned against something she could plainly see for herself at a glance? What necessity? Again, warned not to put her hand inside the finger-guard rail, when she knew that the guard-rail was there (R. p. 6), and when she herself saw this big red bar stretched in full length across the front of the machine speaking warning of the danger beyond far better than printed notice or verbal instruction.

As Mr. Justice Morris took occasion to remark in the Hayzel case, 19 App. D. C., p. 369:

> "Such warning would require (a street railroad company) to open a school of technology for its employees. * * * When a man of mature age offers himself to pursue a particular employment, and by his offer represents himself to have the necessary experience for it, he cannot afterwards be heard to say that he should have been instructed by his employer in the performance of his duties. * * * This is so plainly the dictate of reason and common-sense that elaboration of the subject would seem to be wholly unnecessary."

That this guard-rail effectively served its purpose on this occasion cannot be gainsaid, for plaintiff in error herself tells us that she never put her hand inside or beyond that guard-rail (R. pp. 7-8).

In Ciraack *v.* Merchants' Woolen Co., 6 L. R. A., 733, it is said:

> "In hiring a boy twelve years of age, and apparently of average intelligence, an employer is not called upon to tell him if he holds his hand in fire it will be burned, or strikes it with a sharp instrument it will be cut, or thrusts it in between the teeth of a revolving cog-wheel in the gearing of a mill it will be crushed. From infancy, and through childhood, as well as in later life, we are all making observations and experiments with material substances, and every person of ordinary faculties acquires knowledge, at an early age, of those familiar facts which force themselves on our attention through our senses."

Again:

> "The danger to fingers from two cylinders in contact with each other, and seen to be revolving inwardly, is obvious to any person of ordinary powers, and plainly was understood by the plaintiff."

Connolly *v.* Eldredge, 160 Mass., 560.

In Berger *v.* St. Paul, etc., R. R. Co., 39 Minn., 78, which was an action by an apprentice boy, nineteen years of age, for damages for an injury to his hand received while working on a boiler-plate roller, the Court said:

> "There was no danger in working the machine unless the hand should get caught and drawn in

between the rollers, in which case, of course, it would be crushed. This danger was open to the senses, as apparent as the danger to one who should lie down on a railroad track in front of an approaching locomotive. * * * The plaintiff had, as he testifies, seen the machine worked by others almost every day, probably all the time of his apprenticeship. He had worked it himself every day for a month. Knowledge of the danger was forced on him by his senses. No amount of instruction could have better informed him. The defendant had the right to assume that he knew it. It is apparent that no degree of skill or experience was required to keep the hands away from the rollers. * * * It was not negligence to set him at work, all of the dangers of which he knew as well as any skilled mechanic could know; nor to omit to inform him of what his senses had every day informed him."

In Ry. Co. *v.* Archibald, 170 U. S., 672, it was said:

"An exception to the general rule is well established, which holds that, where an employee receives for use a defective appliance, and with knowledge of the defect continues the use of it, without notice to the employer, he cannot recover for injury resulting from the defective appliance thus voluntarily and negligently used."

Again says the Supreme Court of the United States in the Hough case, 100 U. S., 224:

"If the engineer, after discovering or recognizing the defective condition of the cow-catcher

or pilot, had continued to use the engine, without giving notice thereof to the proper officers of the company, he would undoubtedly have been guilty of such contributory negligence as to bar a recovery, so far as such defect was found to have been the efficient cause of the death. He would, in that case, be held to have risked the dangers which might result from the use of the engine in such defective condition."

Said Mr. Justice Bradley, speaking for the court in the case of Tuttle *v.* Railway, 122 U. S., 189:

"Everything was open and visible, and the deceased had only to use his senses and his faculties to avoid the dangers to which he was exposed. One of these dangers was that of the draw-bars slipping and passing each other when the cars were brought together. It was his duty to look out for this and avoid it. The danger existed only on the inside of the curve. This must have been known to him. It will be presumed that, as an experienced brakeman, he did know it; for it is one of those things which happen in the course of his employment under such conditions as existed here. * * * We have no hesitation in saying that the judge was right in holding that the deceased, by voluntarily assuming the risk of remaining on the inside of the draw-bar, brought the injury upon himself, and the judge was right, therefore, in directing a verdict for the defendant. * * * Judge Cooley announces the rule in the following terms: 'The rule is now well settled,' says he, 'that, in general, when a servant,

in the execution of his master's business, receives an injury which befalls him from one of the risks incident to the business, he cannot hold the master responsible, but must bear the consequences himself. The reason most generally assigned for this rule is that the servant, when he engages in the employment, does so in view of all the incidental hazards, and that he and his employer, when making their negotiations, fixing the terms and agreeing upon the compensation that shall be paid to him, must have contemplated these as having an important bearing upon their stipulations. As the servant then knows that he will be exposed to the incidental risk, he must be supposed to have contracted that, as between himself and the master, he would run this risk.'"

In Way *v.* Railway, 40 Iowa, 341, the Court said:

"At the same time he (the servant) must make a reasonable use of his senses, and if a defect is apparent and patent, and would have been discovered by the exercise of reasonable and ordinary care, in view of the position which the brakeman occupies, the law conclusively presumes that he possesses the knowledge which reasonable attention would furnish. Any other rule would be opposed to, rather than promotive of, the interests of humanity, as it would encourage the grossest inattention, and would reward it the highest when it produced the profoundest ignorance."

The Court, in Murphy *v.* Rockwell Engineering Co., 70 N. J. L., 374, laid down the law thus:

"A doctrine, limiting the adult workman's assumption of ordinary risks to such as his experience had taught him to anticipate, would cast upon the employer the duty of probing the previous life of every such employee, and be utterly impracticable as a rule of responsibility.

"The law places upon every adult the duty of first ascertaining the nature of the occupation in which he proposes to engage, and then determining for himself whether his experience is adequate for his security against the dangers ordinarily incident thereto. This duty rests upon him, not only when he enters into employment, but also at every stage of his service, requiring him to refuse to act in matters beyond the range of his experience, or else to take the risks of the dangers naturally incident to his act. The employer cannot be held responsible for such dangers in the absence of notice that the experience of the workman was less than his contract implied."

So also are:

Schofield *v.* Ry. Co., 114 U. S., 615.
Kohn *v.* McNulta, 147 U. S., 271.
Dist. of Columbia *v.* McElligott, 117 U. S., 621.
Richardson *v.* Cooper, 88 Illinois, 270.
Shearman and Redfield's Negligence, Sec. 209*a*.

This principle goes so far that even where the master has neglected to provide safeguards required by statute, the servant cannot recover if he used the

machine in its unprotected condition and could see the danger.

Krusley *v.* Pratt, 148 N. Y., 372.
Keenan *v.* Edison Co., 159 Mass., 379.

We also find it directly applied to cases of accident resulting from the use of mangles.

The rule is well stated in:

Hickey *v.* Taafe, 105 N. Y., 26.

In this case the plaintiff, a young girl about fourteen years and seven months old, was employed in a laundry to feed collars to an ironing machine. She had worked on the machine about six months before receiving the injury. After one end of a collar had passed between the rollers, in endeavoring to straighten out the other end which had lapped over, one of her fingers was caught in the buttonhole and, being unable to extricate it in time, her hand was drawn between the rollers and badly crushed and burned. The court, in holding that the defendant was not liable, says:

> "She had not, it is true, received any instructions as to its (the machine's) dangers from the defendant or its agents as she says, but she had acquired the information in fact from the best of all teachers, that of practical experience. She knew, therefore, all that the instructions would have imparted to her. This was enough. Being of an age to appreciate and having full knowledge of the danger, and at the same time being

competent to perform the duty demanded from her, the fact that she was a minor does not alter the general rule of law upon the subject of employees taking upon themselves the risks which are patent and incident to the employment."

See also Ogley *v.* Miles, 139 N. Y., 458.

In Caudet *v.* Stansfield, 182 Mass., 451, plaintiff was employed in defendants' laundry. She was engaged upon a mangle ironing sheets. In endeavoring to smooth a wrinkle in a sheet her hand was caught between the rollers and injured.

At the trial the Court directed a verdict for the defendants, and on appeal the judgment was affirmed, the Court saying:

"We see nothing in her testimony to show that she was not of average intelligence. On the other hand, it seems to us that the contrary appears. That she did her work well is shown by the fact, as she testified, that the first week she received three dollars, then she got four, and finally five and a half dollars a week. * * *

"While the plaintiff in this case testified that although she knew there were rolls there she did not know they would catch her fingers, it would seem that she was chargeable with such knowledge. However this may be, and whatever force her testimony may have upon the question of due care on her part, it can have no bearing upon the question of negligence on the part of the defendants. A master has the right to assume, in the absence of anything to show the contrary,

that a person of the age of the one injured in this case knows those facts of common experience, with which ordinary persons of her age and appearance are familiar."

In Hoyle *v.* The Excelsior Steam Laundry Co., 95 Ga., 34; where the plaintiff was engaged in cleaning a machine when her hand was caught in a revolving cylinder and injured, the Court said:

> "It seems to us, from a description of this machine in the Record, that any person of ordinary intelligence would have known that it was dangerous if proper care was not taken in working upon it. The plaintiff, being an adult and having worked upon it for two months and cleaned it several times before, must have known as well as the superintendent that if a part of the cloth wrapped around her hand was allowed to hang down, the cylinder in its rapid revolutions would be likely to take it up and draw her hand into the machine, as it did on this occasion. And when the danger was as obvious to her as it was to him, what was the necessity of his telling her that the machine would mash her hand unless she was careful? Under this state of facts, the failure to warn the plaintiff of the danger was not negligence on the part of the defendant, and the court did not err in granting a non-suit."

The same doctrine was enunciated in Blom *v.* Yellowstone Park Assn., 86 Minn., 237, in these words:

> "If the instrumentalities furnished by the master for the performance of the servant's duties

> are defective, and the servant not only knows this, but also knows and understands, or ought in the exercise of ordinary prudence to understand, the risks to which such defects expose him, he assumes the risks incident to the use of such defective instrumentalities."

Likewise in Keenan *v.* Waters, 181 Pa. St., 247, where no guard-rail was provided, the Court gave a binding instruction for the defendant, holding that inasmuch as the testimony showed that the machine was in perfect working condition, and was of a kind in general use, the absence of a guard-rail thereon evidenced no negligence, and the injured employee assumed whatever of risk there might be on account of its absence when operating said machine.

In the case of Jones *v.* Roberts, 57 Ill. App., 56, the plaintiff was employed by the defendants as a mangle hand in their laundry, and when engaged in operating the machine her hand was caught and injured while she was endeavoring to smooth the wrinkles out of a pillow-slip that was passing through the rolls. The trial court directed a verdict for the defendants, and this action was affirmed on appeal, the Court saying:

> "A young and inexperienced workman has no greater rights of action for an injury received by him than older and more experienced persons would have under the same circumstances if the danger and his duty were fully known to him.
>
> "The end in view to be accomplished by instructions from the master is to make the servant aware of the danger of the employment and of the means of avoiding it.

"If the servant has sufficient capacity to appreciate the danger of his employment, or has acquired the knowledge otherwise than by instruction from the master, and is as fully aware of the danger as if instructed and advised as to it, he must be held to have assumed the peril incident to his employment."

In Hanson *v.* Hammell, 107 Iowa, 171: the plaintiff, a woman twenty-one years of age, employed in the defendants' laundry, was engaged in cleaning a mangle. In so doing her hand was caught between the rollers and the cylinder.

The Court said:

"If, however, the servant is competent to comprehend the danger, or, in fact, knows it, the master is not liable. This is because he is not required to point out perils which are apparent, or which the servant may reasonably be expected to know. * * *

"In the case at bar the plaintiff was familiar with the working of the mangle. She knew how to run it, and knew the danger of allowing her hand to be caught between the rollers and the cylinder, as she states in her testimony. * * * For what purpose, then, warnings, orally or in posted rules? These could have added nothing to her information of the perils of her employment. * * *

"The particular peril attending the performance of the work as she did it, was apparent to her, and fully comprehended, and for this reason

any admonition on the part of the defendants as to the manner of doing it was unnecessary."

In Crowley *v.* Pacific Mills., 148 Mass., 228, it was said:

"The plaintiff's injury was received, according to his own testimony, in consequence of his putting his finger in between the roll and the cylinder in order to smooth the cloth just before it passed upon the cylinder, by taking out a double edge, as it was called, that being a term applied to the turning over or under of the edge of the cloth. The plaintiff was seventeen years old, and had been at work for about six months upon a machine substantially like that upon which he received the injury, except that the distance between the roll and the cylinder was less upon the latter machine; and he had been at work upon the latter machine nearly two weeks. The operation of the machine was simple. In view of the plaintiff's age and experience prior to the time of the accident, no duty then rested upon the defendant to instruct him in reference to the risk of possible injury. It could not be deemed necessary to tell him that if he should put his hand in between the cloth and the revolving cylinder, just at or just before the place where the cloth came in contact with the cylinders, there was danger that his hand would be caught."

Again in the case of Greef Brothers *v.* Brown, 7 Kans. App., 394 (where the judgment was reversed on appeal, with a *procedendo* to sustain the demurrer to

the evidence), the plaintiff, a girl seventeen years of age, was employed as a mangle hand, and while putting napkins through the machine, her hand was caught and severely crushed. so as to render it useless, it was held by the Court that:

> "The defendant in error clearly assumed the risk of an obvious danger. She was a minor, it is true, but she was a stout, rugged girl, nearly seventeen years old, and presumably possessed of the usual intelligence of a girl of that age. The danger was entirely open and apparent to even casual observation, and did not require a high degree of intelligence or extensive experience to understand it. She was bound to use reasonable care in examining her surroundings, to observe and take such knowledge of danger as could be attained by observation; to take notice of the ordinary operation of familiar natural laws and to govern herself accordingly; to use her eyes to see that which was open and apparent; and if a defect was obvious and suggestive of danger, knowledge of the same on her part is to be presumed as fully as though the danger were a subject of common knowledge. She could not fail to see and understand the danger, for the reason that all the elements of it were wide open before her. The very thing happened which she knew was most likely to occur if she allowed her fingers to get between the cylinders, and no warning or caution could have increased her knowledge of the danger or the necessity for care. She, therefore, assumed the risk, and was guilty of contributory negligence. The rule applies to minors,

as well as to adults, who are of such age, intelligence, discretion and judgment as to enable them to comprehend the situation and appreciate the danger. As we have said before, a minor is presumed to possess the ordinary intelligence usually found in persons of his age and circumstance."

Can it be questioned in the case at bar, then, in the light of these authorities, that the plaintiff in error, twenty-two years of age, intelligent, experienced not only in her operation of mangles in other laundries for about two years, but as well, in having enjoyed the actual experience of working for nearly three months on the particular mangle complained of, where the defects, if there were any such, were certainly open and obvious to her, did not appreciate, and therefore assume whatever of risk there may have been in continuing her work upon this mangle?

The plaintiff in error, therefore, failed to make out a *prima facie* case; not alone because the negligence, if any there was, was the negligence of a fellow-servant; not alone because she did not show that the mangle was otherwise than reasonably safe; not alone because the alleged defects were open and obvious and therefore appreciated and assumed by her when she remained at work at this mangle without making any complaint, or giving any notice thereof, but also because she has utterly failed to show the *causal* connection between these so-called defects and the occasioning of the accident.

For these several reasons, all based upon the undisputed facts in evidence, the jury could properly have returned no verdict save one for the defendant.

Under such circumstances, it was the duty of the Court to direct the verdict.

Patton *v.* Texas & Pac. Ry. Co., 179 U. S., 659.
Elliot *v.* Chicago, etc., Ry. Co., 150 U. S., 245.
Southern Pac. Co. *v.* Pool, 160 U. S., 440.
Ry. Co. *v.* McDonald, 152 U. S., 283.
Randall *v.* R. R. Co., 109 U. S., 482.
Prigg *v.* Lansburg, 5 App. D. C., 30.
R. R. Co. *v.* Golway, 6 App. D. C., 143.
Barber *v.* Moore, 10 App. D. C., 31.

Particularly so in a case where the sympathy of the jury is liable to sway their judgment, is such a duty incumbent upon the Court.

Shaffer *v.* Haish, 110 Pa. St., 581.

It is accordingly submitted that the judgment below should be affirmed.

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